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ABSTRACT

This handbook provides background information and classroom activities that teachers can use to help students in grades 6-8 understand the New Mexico court system. Although intended for use in New Mexico, a great deal of the information provided can be used by teachers in other states. The information and activities can be incorporated into curricular areas such as civics, U.S. history, government, and social studies. A variety of resources are included. The handbook opens with narrative explanations of New Mexico's judicial history, the court system, and civil and criminal procedure. Tips for using lawyers and law related resource people in the classroom are then presented. So that students can learn the fundamentals of trial procedure before being introduced to all the elements of attorney questioning techniques, a scripted mock trial is included. Students can read it like a play. Four cases of relevance to young children are presented in pro-se court simulations. Simplified rules of evidence are discussed. A criminal law mock trial and a family law mock trial are provided. To help students learn about plea bargaining and practice representing their own point of view, a plea bargaining simulation is presented. An appellate court role play and a simulation dealing with juvenile hall are included. The handbook concludes with a glossary of legal terms. (Author/RM)

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NEW MEXICO COURTS

INFORMATION AND IDEAS FOR TEACHING

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FOREWORD

This book is intended to provide information about the state court system for teachers and ideas for using law-related materials in the classroom. We encourage teachers to incorporate the information and activities into curricular areas such as civics, U.S. history, government, social studies in grades 6-8, and other appropriate instructional areas.

We urge teachers to use the experiential learning activities such as mock trials and appellate courts, as these strategies have proved to be more effective than the most traditional approaches to civics and law-related education.

The sections on court history and structure are not intended for students' use, but rather as backgound and supplementary material for teachers.

We especially recommend using resource people such as attorneys and other justice personnel to participate in these activities. Ways of using resource people are listed on pages 27 and 28.

The document on the history and structure of the New Mexico courts which forms the basis of this publication was commissioned by the Administrative Office of the Courts. It was written by attorney Ruth Thomas when she was serving as Administrative Assistant to the Chief Justice of the New Mexico Supreme Court.

The editors would like to thank Diane Trainor of the Administrative Office of the Courts for making the manuscript available for publication.

Jean Craven
Melinda Smith

June 1980

PREFACE

This handbook was developed to provide assistance to teachers as they help students understand the New Mexico court system. Part I is based on a pamphlet originally issued by the Administrative Office of the Court as part of its education program. Part II is new in its entirety.

The "ideas for teaching" are designed first to be useful. Secondly, they provide enriching and rewarding learning experiences for teachers and students alike. The decision to issue this publication reflects the interest of the New Mexico Council for the Social Studies and State Department of Education in this area. But more important, it addresses a need that has been evident for a long time.

As a resource tool this handbook will never be complete it deserves constant revision and periodic updating. For this reason it is in a loose-leaf format. Feedback as to its usefulness is sought and greatly appreciated.

Joseph D. Baca, Specialist
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NEW MEXICO'S JUDICIAL HISTORY

Even before it gained its right to a star in the flag, New Mexico had a judicial past filled with colorful figures and exciting facts. New Mexico's history began when most of America was still unexplored wilderness.

The territory that is now New Mexico was controlled by Spain from the 16th to the 19th century. Then in 1821 Mexico revolted, gaining its independence, and until 1836 New Mexico was a territory of Mexico. In 1836 a new constitution was adopted providing for the departmentalization of New Mexico under central government in Mexico City. It is here we begin to see the first signs of judicial organization.

Mexico divided the territory into districts governed by appointed prefects, and the districts into counties governed by alcaldes. An alcalde, untrained in the law, was the only justice actively functioning at the time. Any person with a complaint would appear before an alcalde, who would order the complainant to summon the defendant. The alcalde would hear their oral arguments and, based upon who might be the more convincing of the two, make a decision. People had little faith in the government or its administration of justice and, when American authorities finally took over, it was a long time before this faith was rekindled and the people accepted their new judicial system.

In 1846, Brigadier General Stephen Kearny marched on Santa Fe to overthrow the Mexican government and assume military control of New Mexico. One of his first decisions was to appoint a three-man superior court as the highest tribunal of the territory. The superior (supreme) court was to consist of three justices, each of whom was also to preside over one of the three judicial circuits into which the territory was divided. Its jurisdiction was defined as "appellate" and pertained to both civil and criminal cases. To that first supreme court Kearny appointed Joab Houghton, Antonio Jose Otero, and Charles Beaulrian. Chief Justice Joab Houghton opened the first term of the New Mexico Court ever held by an American judge on December 1, 1846. This court, however, was very ineffective due to the military domination. There were many clashes with the military authorities which kept the court's jurisdiction to a bare minimum. Only a year later, it was evident that the Superior Court was in

need of reform. Another factor weakening the system was that a superior court justice, also a trial judge, would review a case he had earlier decided at the district level.

Little is actually known about the judicial activities of the first court since many of the records either were not kept or have since been lost. This court did, however, serve the important function of introducing the processes and ideals of United States justice to the Southwest. Mexican justice had, for the most part, been dispensed by the village alcaldes. In fact, there appears to have been only one licensed lawyer in New Mexico during the whole period of Mexican control.

The military rule of New Mexico under the Kearny Code lasted from 1846 until 1850 when New Mexico was organized as a territory as part of the Compromise of 1850. In 1851, the legislature passed the Organic Act which established judicial organization to include a supreme court, district courts, probate courts, and justices of the peace. It also provided for judicial districts, terms of office, and staggered court terms so as to provide for substitution of judges in case of illness or absence. It also allowed for the few lawyers in the state to travel from district to district.

The first Monday in January, 1851, the Supreme Court met for the first time in Santa Fe. It would remain there for three weeks, each Justice finally returning to his respective district for a Spring and Fall session. Attorneys and judges alike were busy riding the circuit in those days. Obviously there were few cases appealed due to the expense and distance involved.

From this point on little happened to change either the basic organizational or jurisdictional structure of the territorial courts. The judiciary, lawyers, and the law did gradually adapt to changing conditions, but each innovation was a long time in the making. In civil actions common law replaced the civil law and the Kearny Code in 1876, holding sway until legislative adoption of a new civil code of procedure in 1879. The New Mexico Bar Association, organized in 1886, sought to provide rules for practice before the courts and rules for admission to the bar.

From 1879 on, the increase in caseloads became greater due to the coming of the railroad, improved transportation conditions, and increase in population. As the backlogs continued to grow, the need was recognized for an additional judicial district, and in 1885 Governor Edmund Ross recommended to the United States Congress that a fourth judicial district be established. In 1887, after

a number of years of indifference to court reform, Congress added a fourth judicial district. A fifth was added in 1890, a sixth in 1904, a seventh in 1909, and an eighth in 1911. In addition to speeding up the judicial process, the enlarged number of courts meant that a district judge no longer had to pass on his lower court decision while presiding on the supreme court. It also meant that the territorial supreme court was able to clear its docket and leave a clean record for the state supreme court.

In 1895 Governor W. T. Thornton recommended the separation of the supreme court from the district courts, suggesting that a court of last resort be established, comprised of three to five judges. Not until 1912, when New Mexico gained admission to the union was this separation accomplished.

From 1846 to 1912, a total of sixty men had served, one time or another, as a Supreme Court Justice. The great turnover is explained in part by the process of political appointment. When a new administration took office in Washington, D.C., new judges were appointed, resulting in cases having to be reargued and serious delay in settling disputes. The sessions, however, brought great excitement and drama to the small New Mexico communities in those days. Spectators, lawyers, defendants, and witnesses alike would come from miles around to join in the revelry.

On January 15, 1912, the three-judge Supreme Court of the State of New Mexico began work, and the days of New Mexico's territorial justice were at an end. Republicans had dominated the constitutional convention and insisted on the partisan election of judges because they expected the judiciary to play a political role in support of conservative ideals. In fact, two of the first three justices, who were Old Guard Republicans, helped draw up the article on the judiciary. New Mexico entered the union under a constitution that provided for partisan election of state judges, with eight-year terms for supreme court judges. Neither the selection method for judges nor the length of term provision has ever been changed.

Unlike other western states which followed the Progressive Movement's lead of non-partisan judicial elections, New Mexico alone opted for partisan election of judges. New Mexico remains one of only twelve states to select its judges through this method. The other states utilize appointive methods, non-partisan elections, or merit selections.

Until 1930, only Republicans won election to the state's highest court. The election of 1930 was a watershed in New Mexico political history, for it

marked the beginning of Democratic control of politics. It similarly meant Democratic domination of the judiciary. Supreme court personnel clearly reflected this state of affairs. Only Democrats won election to the high bench from 1930 on. Democratic politics became state politics, the Democratic Party having picked up bloc support from Hispanic voters, and a Democratic court now played its role within the political process. It remains to be seen whether the increasing strength of the Republican party in the state of New Mexico will be reflected in the judiciary.

Since statehood, there have been several important changes in judicial organization. In 1929, the number of supreme court justices increased to five. The number of judicial districts has expanded to thirteen. A constitutional amendment approved by the voters in 1965 created the Court of Appeals, which was intended to reduce the caseload of the Supreme Court. In the 1966 general election, magistrate courts were created to replace justice of the peace courts. Reform was needed to correct the abuse of the fee system for compensating justices of the peace.

Municipal Courts. At the local level are the municipal courts. Their jurisdiction extends to all offenses under city law, including, of course, traffic violations, with the maximum penalty being a $300 fine and ninety days in jail. Municipal court judges run in non-partisan elections for four-year terms and may seek an unlimited number of terms. In order to run, they must meet the office qualifications set by city law. This means that they must be lawyers to serve on Albuquerque's municipal bench but need not necessarily be lawyers in other parts of the state. Both magistrates and municipal judges must, moreover, attend yearly training sessions, unless excused by the chief justice of the state supreme court. Municipal court is not a court of record, so all appeals to district court necessitate a new trial.

Probate Courts. Each county has a probate court that is to settle the uncontested estates of deceased persons (where last wills and testaments have been probated as genuine). If a controversy arises, formal probate proceedings move to district court. Probate judges run as partisans at every general election.

Magistrate Court. Magistrate court is the state court of limited jurisdiction or authority. Under state law, magistrate courts have the power to decide certain types of cases. The majority of cases are handled in the magistrate courts. There is a minimum of one magistrate court in each county of the state. The judges in this court do not have to be lawyers (except in Bernalillo County), but they are required to have a high school degree and be a resident voter. The magistrate court is called the "people's court" because a citizen can present his own case, usually without using an attorney. Although the proceedings in magistrate court are similar to those in the district court, they are simplified so that everyone has a forum available to present his case.

The jurisdiction of the magistrate court is limited in civil cases to claims involving not more than $2,000 and $5,000 in Bernalillo County excluding interest and costs. Certain types of cases are also excluded, such as those involving real estate or domestic relations. The people's court, however, can decide both contract and tort claims within the $2,000 limit and $5,000 limit in Bernalillo County. A party also may request a jury trial of six members on appropriate matters. Such trials are generally more

informal than in district court but the procedures are similar.

The magistrate court is also empowered to decide certain types of criminal cases. Violations of the state motor vehicle code (traffic citations) are handled by the magistrate court. A misdemeanor is a crime which carries a penalty of imprisonment for less than one year and/or a fine of not more than $1,000. A criminal trial similar to those conducted in district court is authorized in magistrate court.

The jurisdiction of a magistrate over felony cases is much more limited than in misdemeanor cases. A defendant who is charged with a felony makes his first appearance before a magistrate. At this time the defendant is informed of the charges against him and his constitutional rights are explained. Although this appearance is sometimes referred to as an arraignment, this is not the proper term since the defendant does not enter a plea at this time. The defendant's plea is entered in district court. After the first appearance, a preliminary hearing is held and the defendant is either released or bound over to district court.

By July, 1980, Bernalillo County will have a metropolitan court, thus deviating somewhat from the system of state-wide courts of limited jurisdiction. The county's magistrate, municipal, and small claims courts are to be combined into one metropolitan court. The first metropolitan judges are to come from these three courts and are to remain in office for the rest of the terms for which they were elected or appointed. Thereafter, the court's eleven judges are to be elected in the same manner as magistrates.

District Court. The district court is the state court of general jurisdiction, i.e., it is authorized to hear and determine all the civil and criminal cases which are not specifically exempted from its jurisdiction. The judges of the district court are elected for six-year terms. In order to be a district court judge, a person must be at least 30 years old, have practiced law in the state for a minimum of three years, and be "learned in the law." There are 13 judicial districts in New Mexico. Each district has a district court that may have more more than one division and therefore more than one judge. As the trial court of general jurisdiction, the court has both criminal and civil responsibilities. Its criminal responsibilites extend to the trying of felonies, major crimes that may be punished by more than a year in prison and more than a $1000 fine.

The defendant may choose a trial either with or without a jury, the jury being made up of twelve persons. The district court's civil responsibilities extend to all manner of both minor and major civil suits and, by legislated jurisdiction, to all lawsuits where the money sum sought is in excess of $2000. This court handles domestic relations matters, adoptions, incompetency hearings, and contested estate cases. In addition, the district court supervises the courts of limited jurisdiction within its district and hears appeals from these courts as well.

Court of Appeals. The Court of Appeals presently consists of seven judges. These judges are elected for eight-year terms and must all be attorneys. The Court of Appeals is a court of limited appellate jurisdiction. It may only decide those types of cases that the legislature authorizes. This court handles most of the criminal appeals (except where life imprisonment has been imposed), appeals from some state agency decisions, tort claims, workmen's compensation appeals, and appeals of probate matters.

Supreme Court. The Supreme Court consists of five justices who are elected for eight-year terms. The justices must be attorneys. This is the highest appellate court in the state and it has general appellate jurisdiction over those types of cases not specifically assigned to the Court of Appeals. This court is the final authority on questions of law and may review decisions of the Court of Appeals as well as the decisions of the district court. The Supreme Court also makes the rules of procedure for all of the inferior courts and it exercises supervisory control over the other courts. It is also constitutionally authorized to issue certain remedies by writ which are not available to the Court of Appeals. The chief justice, the person with the shortest term to serve, presides over the court's annual term, which begins the second Wednesday in January and runs as long as is necessary. Cases involving a substantial federal question can be appealed to the United States Supreme Court.

HOW A LAWSUIT BEGINS

Court actions fall into two broad categories--civil and criminal. Civil cases are those in which an individual, business, or agency of government seeks damages from another individual, business, or agency of government; these constitute the great bulk of the cases in the courts. The most common example is the suit for damages arising from an automobile accident. In legal terms this is a tort action. A criminal action is one brought by the state or federal government against an individual charged with committing a crime.

CIVIL CASES

This section deals with an average civil case. Civil actions generally are brought either for breach of a contract or for an injury or wrong (tort).

A person who believes that he has been injured or damaged by another person or business consults a lawyer and relates the facts and circumstances which are believed to constitute a claim. The attorney takes the client's statement, interviews possible witnesses, examines those laws and court decisions on which the claim is founded, and tries to determine whether the client has a legal claim.

Jurisdiction and Venue

If the attorney decides the client does have a claim, the first step is to select the proper county or district in which to file the case. A court has no authority to render a judgment in any case unless it has jurisdiction over the person or property involved. This means that the court must be able to exercise control (obtain service of summons) over the defendant, or that the property involved must be located in the county or district under the court's control.

Certain actions are said to be local--i.e., they may be brought only in the county where the subject matter of the litigation is located. An example of a local action would be an action to determine the ownership of a piece of land. Other actions are said to be transitory--i.e., they may be brought in any county in any state where the plaintiff resides or where the defendant may be found and served with summons. A suit for personal injuries is an example of a transitory action.

Venue means the county or district where the action is to be tried. Venue

may be changed to another county or district upon application and a showing of good cause or by agreement. Where wide publicity has been given to a case before trial a change of venue from the county can be sought in an effort to secure jurors who have not formed an opinion as to the facts. Venue also may be changed to serve the convenience of witnesses.

Bringing the Action

After selecting the proper court the attorney prepares and files a complaint or petition. The client is the plaintiff and the person or firm against whom the case is filed is the defendant. In certain types of cases the plaintiff is referred to as the petitioner since that person is petitioning the court for relief, and the defendant is then referred to as the respondent.

The name of the court and the names of the parties constitute the caption or style of the case. The petition states the facts of the plaintiff's action against the defendant, and sets forth the amount of damages, judgment, or other relief sought.

The attorney for the plaintiff also requests the clerk of the court to issue a summons. The summons is official notice to the defendant that a case has been filed naming the person who receives the summons as defendant. A copy of the complaint is attached to the summons. The plaintiff then directs the sheriff of the county to serve a copy of the summons and complaint upon the defendant. Any person over the age of 18 who is not involved in the suit may serve the summons. When the sheriff has served the summons, the original of the summons is returned to the court with a notation that the defendant has been served on a certain day. After service of the summons, the defendant has a certain period of time (usually 20 or 30 days) within which to file a pleading, or answer, to the plaintiff's complaint.

Preparation for Trial

The plaintiff and defendant, through their respective attorneys, attempt to gather all of the pertinent facts bearing upon the case. The defendant may begin a defense by filing certain pleadings, among which may be one or more of the following:

¶ Motion to Quash Service of Summons. This places before the court the question of whether or not the defendant has been served with summons as provided by law.

¶ Motion to Strike. This motion calls upon the court to rule whether or not the plaintiff's complaint contains irrelevant, prejudicial, or other improper matter; if so, the court may order such matter deleted.

¶ Motion to Make More Definite and Certain. Such a motion requires the plaintiff to set out the facts of the complaint more specifically, or to describe the injury or damages in greater detail, so that the defendant will have adequate notice of what injury is complained of or so a more precise answer can be prepared.

¶ Motion to Dismiss. This motion may be based on several grounds. If the defendant thinks that the suit was brought in the wrong court or in the wrong county, he may move to dismiss for lack of jurisdiction or for improper venue. This motion may also be made when the defendant feels that the plaintiff has no legal cause of action, even if everything the plaintiff alleges in the complaint is true. When a person who was involved in the transaction giving rise to the suit has not been included, the defendant may bring this motion for failure to join such person as an an indispensable party.

¶ Motion for Change of Venue. A defendant may move to change the place in which the trial was scheduled to be heard if the defendant believes that a fair and impartial trial cannot occur in that county.

¶ Answer. This statement by the defendant denies the allegation in the plaintiff's complaint, or admits some and denies others, or admits all and pleads an excuse. The purpose of such admissions and denials is to clarify precisely which issues are left to be tried by the court or jury.

¶ Counter-Claim. This pleading may be filed by the defendant either separately or as part of the answer. The counter-claim asks for relief or damages on the part of the defendant against the original plaintiff. When such a step is taken, the plaintiff may then file any of the foregoing motions to the counter-claim, except a motion to quash service of summons.

¶ Reply to Counter-Claim. The plaintiff may file a reply to the counter-claim which answers any new allegations raised by the defendant in the counter-claim.

Note: A pleading refers to an answer or other formal document filed in the action. The word should not be used to describe an argument made in court by a lawyer.

Pre-Trial Discovery Procedures

¶ Taking of Depositions. A deposition is an out-of-court statement of a witness under oath, intended for use in court or in preparation for trial. Either of the parties in a civil action may take the deposition of the other party, or of any witness. Depositions frequently are necessary to preserve the testimony of important witnesses who cannot appear in court, or who live in another state or jurisdiction. This might be the testimony of a friendly witness, one whose evidence is considered helpful to the plaintiff or defendant. Or it might involve a witness of the opposing party whose statements are taken to discover

the nature of the evidence which would be given if that person were summoned as a witness in the trial.

A state may not compel the presence at a civil trial of a witness who is outside the state. A person who seeks to take the deposition of such witness must notify the attorney for the opposing party before going to the other jurisdiction to take the deposition of the witness. If the witness is living in a foreign country, a commission--commonly called letters rogatory--is issued by the court directed to an official giving the power to take a deposition and forward it to the court. Then, if the witness is absent from the jurisdiction or unable to attend the trial in person, the deposition may be read in evidence. If a person who has given a deposition also appears in court as a witness at the trial, the deposition may be used to establish a lack of credibility if the oral testimony given by the witness at the trial is different from that contained in the deposition.

Parties to the lawsuit are required to appear for their depositions; witnesses may be subpoenaed.

When a deposition is taken, the attorney for each side is present along with the witness and a court reporter. Both attorneys are allowed to question the witness under oath. The court recorder records all that is said and then types the testimony so that each side has a copy of the recorded testimony.

¶ Discovery. In addition to the taking of depositions in an attempt to reveal the facts upon which another party relies, either party may submit written questions, called interrogatories, to the other party and require that these be answered under oath.

Other methods of discovery are: requiring adverse parties to produce books, records, and documents for inspection, to submit to a physical examination, or to admit or deny the genuineness of documents.

Pre-trial discovery procedures greatly reduce the actual trial time because the court requires the parties to agree on the introduction of undisputed evidence and exhibits.

The Pre-Trial Conference

After all of the pleadings of both parties have been filed and the case is at issue, many courts then set selected cases for pre-trail hearings. At this hearing the attorneys appear, generally without their clients, and in the presence of the judge seek to agree on undisputed facts. These are called stipulations; they may include such matters as time and place in the case of an accident, the use of pictures, maps, or sketches, and other matters, including points of law which the court believes might shorten the actual trial time without infringing upon the rights of either party. Then, if a trial date has not been set, the court assigns a specific date for the case. Pre-trial procedure, used extensively in the federal district courts and in most state district

courts, very often results in the settlement of the case without trial.

CRIMINAL CASES

Bringing the Charge

Criminal charges are instituted against an individual in one of three ways: 1) through a complaint filed in magistrate court; 2) through an indictment, or true bill, voted by a grand jury; or 3) through the filing of an information in district court by the prosecuting attorney (the district attorney or the attorney general), alleging the commission of a crime. In any case the charge must set forth the time, date, and place of the alleged criminal act as well as the nature of the charge.

The Grand Jury

The grand jury is a group of twelve citizens summoned by the court to inquire into crimes committed in the county, or in the case of federal grand juries, in the federal court district. Its proceedings are not only private but secret. However, witnesses before a grand jury are perfectly free to describe their testimony to anyone they please after leaving the grand jury room. To this extent such proceedings are not secret.

In New Mexico the grand jury is convened at regular intervals, or it may be called at special times by the court to consider important cases. The grand jury has broad investigative powers; it may compel the attendance of witnesses, require the taking of oaths, and compel answers to questions and the production of records. Ordinarily, however, the grand jury hears such witnesses as the prosecutor calls before it and considers only the cases presented to it by the prosecutor. Nevertheless, from time to time, a grand jury may undertake inquiries of its own, in effect taking the initiative away from the prosecutor. In common parlance this is known as a "runaway" grand jury.

The grand jury's traditional function is to determine whether information presented by the prosecutor, or discovered by its own inquiries, is enough to warrant the return of an indictment charging a person or persons with a particular crime. If it concludes that the evidence does not warrant a formal charge, it may return a no bill.

Arrest

When an indictment is returned by a grand jury or a complaint or an information is filed by the prosecuting attorney, the clerk of the court issues a

warrant for the arrest of the person charged if the person has not already been arrested and taken into custody. The law usually requires that in a felony case (generally, a crime for which a person may be placed in the penitentiary--therefore more serious in nature than a misdemeanor) the defendant must promptly be brought before a magistrate (in federal cases, the U. S. Magistrate) and be permitted to post bond in order to be released from custody, and to appear at a preliminary hearing. In some cases of capital offenses the defendant may not be eligible for release on a bail bond.

Law enforcement officials may not hold a person for an unreasonable length of time unless a criminal charge is filed. After being formally charged with a crime, a defendant is entitled to an attorney at all times. If a defendant is unable to pay for an attorney and asks for counsel, the court is required to appoint an attorney to provide legal representation at no cost to the defendant.

The Preliminary Hearing

An individual charged with a crime is entitled to a preliminary hearing before a magistrate or district court judge and the court will set a hearing within ten days if the defendant is in custody, or 20 days if the defendant is not in custody. At the hearing the state must show that there is probable cause for the magistrate to believe that the defendant has committed the crime as charged. The defendant is entitled to be present at this hearing but need not present evidence.

If the magistrate believes the evidence justifies it, the defendant will be bound over for trial in the district court--i.e., placed under bond for appearance at trial or held in jail if the charge involved is not a bailable offense, or if the defendant is unable to post bond. On the other hand, the magistrate may dismiss the charge and order the defendant released if the evidence in the preliminary hearing is insufficient to show probable cause that the defendant committed the offense.

In most instances a criminal case is placed on the court's calendar for arraignment. On the date fixed, the accused appears, the complaint, indictment, or information is read, the rights of a defendant are explained by the judge, and the accused person is asked to plead guilty or not guilty to the charge. If the plea is not guilty, the case will be set later for trial. If the plea is guilty, a date for sentencing is set. In cases of minor offenses, sentences may be imposed immediately.

Preparation for Trial

As in civil cases, very careful preparation on the part of the state and the defense is done before the trial. However, the defense may first enter a motion challenging the jurisdiction of the court over the particular offense involved, or over the particular defendant. The defense attorney also may file a motion for dismissal, as in a civil suit. In preparing for trial, attorneys for both sides will interview prospective witnesses, and if thought necessary, secure expert evidence and gather testimony concerning ballistics, chemical tests, costs, and other similar data.

THE TRIAL: CIVIL OR CRIMINAL

While in detail there are some differences in trial procedure between civil and criminal cases, the basic pattern in the district court is the same. Consequently, this section treats the trial steps collectively.

The Jury List

The district court clerk randomly selects the names of persons to serve on juries from the pollbooks--a list of voters--and places the names on a master jury wheel. A computer may also be used to compile this list. The district court may also appoint a group of people called a jury commission to help select the jury list. The trial jury in either a civil or criminal case is called a petit jury. It is chosen by lot by the court clerk from the compiled jury list and drawn from a jury wheel. The jury wheel is a container with a transparent window from which the juror lot slips are drawn.

On occasion, the qualification of all the jurors may be challenged. This is called a challenge to the array, and generally is based on the ground that the officers charged with the duty to select the jurors did so in an illegal manner.

Officers of the Court

The judge is, of course, the officer who is elected to preside over the court. If the case is to be tried before a jury, the judge rules upon points of law dealing with trial procedure, presentation of the evidence, and the law of the case. If the case is tried before the judge alone, the judge performs the function of the jury and determines the facts in addition to performing the aforementioned duties.

The court clerk is an officer of the court who, at the beginning of each court session of approximately three months, upon the judge's instruction, gives an oath to the entire panel of prospective jurors (veniremen) for all cases to be heard during the session. By this oath the veniremen promise that if called they will truly answer any question touching their qualifications to sit as jurors in any case. Any prospective juror who is disqualified by law, or has a valid reason to be excused under the law, ordinarily is excused by the judge at this time. A person may be disqualified from jury duty who is not a resident voter or at the discretion of the judge because of physical or mental illness. To replace the disqualified veniremen, the court clerk draws the names of additional veniremen from a box and they are accepted as eligible jurors if qualified.

The bailiff is an officer of the court whose duties are to keep order in the courtroom, to call the witnesses, and to take charge of the jury, as instructed by the court, whenever the jury may not be in the courtroom, and particularly when, having received the case, the jury is deliberating upon its decision. It is the duty of the bailiff to see that no one talks with or attempts to influence the jurors in any manner whatsoever.

The court reporter has the duty of recording all of the proceedings in the courtroom, including the testimony of the witnesses, objections made to evidence by the attorneys, and the rulings of the court. In addition, the court reporter lists and marks for identification any exhibits offered or introduced into evidence.

The attorneys are officers of the court whose duties are to represent their respective clients and present the evidence on their behalf, so the jury or the judge may reach a just verdict or decision.

The role of the attorney is sometimes misunderstood, particularly in criminal proceedings. Our system of criminal jurisprudence considers every defendant to be innocent until proved guilty beyond a reasonable doubt. As a constitutional safeguard, every defendant has the right to be represented by legal counsel. This is true whether or not the defendant is unpopular and whether or not the defendant is guilty. It is entirely ethical for an attorney to represent a defendant whom the community believes to be guilty. The defendant who pleads innocent is entitled to every protection afforded by the law and to a trial in accordance with well-established rules.

One of the Canons of Professional Ethics of the American Bar Association

provides that: "It is the right of the lawyer to undertake the defense of persons accused of crime, regardless of his personal opinion of the guilt of the accused; otherwise innocent persons, victims only of suspicious circumstances, might be denied proper defense."

The significance of the provision is clear: In order to provide protection from conviction on insufficient evidence, every defendant is entitled to counsel.

Selecting the Jury

In most criminal cases there are twelve jurors. Most civil cases are tried without a jury, but in those where a jury is requested, there is a jury of six unless a party requests a jury of twelve. Alternate jurors are sometimes selected to take the places of members of the regular panel who become disabled during the trial. These alternate jurors hear the evidence just as do the regular jurors, but they do not participate in the deliberations unless a regular juror becomes disabled.

The jury selection begins with the calling, by the court clerk, of at least twelve veniremen whose names are selected at random from a wheel or box, to take their places in the jury enclosure. The attorneys for the parties, or sometimes the judge, may then make a brief statement of the facts involved for the purpose of acquainting the jurors with enough facts so that they may intelligently answer the questions asked by the judge and the attorneys. The questions include the name, the occupation, the place of business and residence of each prospective juror. Prospective jurors are asked whether they have any personal knowledge of the case. If any venireman expresses an opinion or prejudice which will affect judgment in the case, the court may dismiss that venireman for cause, and another will be called by the court clerk. This questioning of the jurors is known as the voir dire, a legal term meaning "to tell the truth."

There is no limit on the number of jurors who may be excused for cause. In addition to the challenges for cause, each party has the right to exercise a specific number of peremptory challenges. This challenge permits an attorney to have the judge excuse a particular juror without having to state a cause. If a peremptory challenge is exercised, another juror is then called, until attorneys on both sides have used up all of the peremptory challenges permitted by law or they have waived further challenges. The number of peremptory challenges is limited and varies with the type of case and the number of jurors.

Thus, the jury is selected and then is sworn in by the court clerk to try the case. The remaining members of the jury panel are excused and directed to report at a later time or date when another case will be called, or are told to remain for another scheduled case.

Excluding the Witnesses

In certain cases, civil or criminal, the attorney on either side may "call for the rule" on witnesses, which means that except for the plaintiff or complaining witness the defendants and certain designated witnesses, all witnesses who may testify for either party will not be allowed in the courtroom until they are called to testify. These witnesses are warned by the judge not to discuss the case or their testimony with other witnesses or persons, except the attorneys. After testifying, the witnesses often remain in the courtroom. If the rule is not called for, the witnesses may stay in the courtroom if they wish.

Opening Statements

After the selection of the jury, the plaintiff's attorney, or attorney for the state in a criminal case, may make a brief opening statement for the purpose of advising the jury what the plaintiff or the state intends to prove in the case. This statement must be confined to facts intended to be shown by the evidence and cannot be argumentative. The attorney for the defendant also may make an opening statement for the same purpose, or may reserve the opening statement until the end of the plaintiff's or state's case. Either party may choose not to make an opening statement.

Presentation of Evidence

The plaintiff in a civil case, or the state in a criminal case, will begin the presentation of evidence with their witnesses. Among these usually will be included the plaintiff in a civil case or the complaining witness in a criminal case, although they are not required to testify.

A witness may testify to a matter of fact. The witness can tell what was seen, heard (unless it is hearsay as explained below), felt, smelled, or touched through use of the physical senses. Generally, a statement of opinion or conclusion is not allowed unless the opinion is based on perceptions of the witness or unless it clarifies a disputed fact or testimony offered by the witness. A witness who has been first qualified in a particular field as an expert may given an opinion based upon a set of facts and may state the reasons

for that opinion. These facts are put to the expert in a question called a hypothetical question. The facts contained in this hypothetical question are assumed to be true, but the opposing party may challenge any of these facts.

Generally, a witness cannot testify to hearsay, that is, what someone else, other than a party to the suit, has told the witness outside the presence of the parties to the action if the testimony is intended to prove the truth of what the other person said. Also, a witness will not be permitted to testify about matters which are too remote to have any bearing on the decision in the case, or matters that are otherwise irrelevant and immaterial.

Attorneys may not ask leading questions of their own witnesses, particularly about matters which are in dispute in the lawsuit, although routine, noncontroversial matters are sometimes asked with leading questions. A leading question is one which suggests the answer desired, for example: "Isn't it true that the defendant had been drinking for five hours prior to the accident?" A non-leading question could be worded as, "How long had the defendant been drinking prior to the accident?"

Objections will be made by the opposing counsel to leading questions, or may be made to a question that calls for an opinion or conclusion on the part of the witness, or which obviously will require an answer based on hearsay. There are many other possible reasons for objections under the rules of evidence. Objections are often made in the following form: "I object to that question on the ground that it is incompetent, irrelevant, and immaterial and for the further reason that it calls for an opinion and conclusion of the witness." The judge may thereupon sustain or deny the objection, and if sustained, another question must then be asked or the same question rephrased in proper form.

If an objection to a question is sustained on either direct or cross-examination, the attorney asking the question may make a "tender of proof." The jury is removed from the courtroom and the attorney questions the witness on the matter ruled inadmissible. The tender forms part of the record on appeal. If the objection is overruled, the witness may then answer in the presence of the jury.

A witness also may be used to identify documents, pictures, or other physical exhibits to be offered in evidence in the trial.

Cross-Examination

When plaintiff's attorney or the state's attorney has finished direct examination of the witness, the defendant's attorney or opposing counsel may then cross-examine the witness upon any matter about which the witness has already been questioned in direct examination. The cross-examining attorney may ask leading questions for the purpose of inducing the witness to testify about matters which the witness may otherwise have chosen to ignore. On cross-examination, the attorney may try to bring out any prejudice or bias of the witness, such as a relationship or friendship to the party, or other interest in the case. The attorney is permitted to ask the witness about any conviction of a felony or crime involving moral turpitude, since this bears upon the credibility of the witness.

The plaintiff's attorney may object to certain questions asked on cross-examination on the ground that they are improper questions because they deal with facts not touched upon in the direct examination, and on the grounds mentioned previously.

Re-Direct Examination

After the opposing attorney is finished with cross-examination, the attorney who called the witness has the right to ask questions on re-direct examination. The re-direct examination covers new matters brought out on cross-examination and generally is an effort to re-establish the believability of a witness whose testimony on direct examination has been weakened by cross-examination. Then the opposing attorney may re-cross-examine. At the conclusion of the plaintiff's or state's evidence, the attorney will announce that the plaintiff or state rests.

Motion for Directed Verdict

At the conclusion of the plaintiff's or state's case, out of the presence of the jury, the defendant's counsel may make a motion to end the plaintiff's or state's case on the ground that there is not enough evidence to uphold a verdict for the plaintiff or the state. This is known as a motion for a directed verdict or a verdict which the judge orders the jury to return in behalf of the defense. The judge will thereupon either grant or deny the motion. If it is granted, the case is concluded by the court's having the bailiff hand the jury foreman the proper verdict form to sign. If it is over-

ruled, the defendant then is given the opportunity to present evidence.

Presentation of Evidence by the Defendant

After the plaintiff's case has been presented, the defendant proceeds to present a case. The defense attorney may elect to present no evidence, particularly in a criminal case; or evidence may be presented without testimony by the defendant. In a criminal case the defendant need not take the stand. The reason for this is that the state has the burden of proof, i.e., it must prove the defendant guilty of the crime.

In a civil case, the plaintiff's case must be proved by a preponderance of evidence. This merely means the greater weight of the evidence.

In a criminal case, the evidence of guilt must be beyond a reasonable doubt.

The defendant is presumed to be not negligent or liable in a civil case, and not guilty in a criminal case. The defense attorney may feel that the burden of proof has not been met, or that presentation of the defendant's witnesses might strengthen the plaintiff's case. If the defendant does present evidence, the same procedure is followed as the plaintiff or state followed, as set out above, and the plaintiff or state will cross-examine the defendant's witnesses.

Rebuttal Evidence

At the conclusion of the defendant's case, the plaintiff's or state's attorney may then present rebuttal witnesses or evidence, designed to counter the testimony and evidence presented by the defendant. The matter covered is evidence on which the plaintiff or state did not present any evidence in its case in chief initially; or it may be the presentation of a new witness who can contradict the defendant's witness. If there is a so-called surprise witness, this is often where such a witness will appear. At the conclusion of the rebuttal evidence, the defendant may present additional evidence to contradict it.

Final Motions

At the conclusion of all the evidence, out of the presence of the jury, the defendant may again renew a motion for a directed verdict. If the motion is sustained, the case is concluded. If overruled, the trial proceeds.

Thus, the case has now been concluded on the evidence and it is ready to be submitted to the jury.

Conferences During the Trial

Occasionally during the trial the lawyers will ask permission to approach the bench and speak to the judge, or the judge may call them to the bench. A whispered conference follows, having to do with the admissibility of certain evidence, irregularities in the trial, or other legal matters. The questions involved in a bench conference are outside the province of the jury since this is a matter of law for the judge to decide. If the ruling cannot be made quickly, the judge will order the jury to retire, and then will hear the arguments of the attorneys outside the presence of the jury.

Whenever the jury leaves the courtroom, the judge will admonish them not to form or express an opinion or discuss the case with anyone.

Instructions to the Jury

While the giving of instructions to the jury on the legal issues is the responsibility of the judge, the attorneys for each side submit a number of requested instructions to the judge, designed to apply the law to the facts in evidence. The judge will indicate which instructions will be given to the jury and which will be refused. The attorneys may then make objections to such rulings for the purpose of the record in any appeal.

The judge reads these instructions to the jury. This is commonly referred to as the judge's charge to the jury. The instructions cover the law as applicable to the case. Only the judge may decide what the law is, and not the jury.

In reading aloud the instructions, the judge will state the issues in the case, define any terms or words necessary, and tell the jury what issues it must decide if it is to find for the plaintiff or the state, or for the defendant. The judge will advise the jury that it is the sole judge of the facts and of the credibility of witnesses; and that upon leaving the courtroom to reach a verdict, it must elect a foreman of the jury and then reach a decision based upon the judgment of each individual juror.

In a state court, the instructions to the jury are given before the closing arguments and it is proper for the attorneys to comment on them and relate them to the evidence. In federal court, the closing arguments are made before the jury is charged and the attorneys may still refer to the instructions which will be given.

Closing Arguments

The attorney for the plaintiff or state will present the first argument in closing the case. Generally, the purpose of this argument is to summarize and comment on the evidence in the most favorable light for the plaintiff or the state. Issues outside of the case cannot be argued, nor can there be any mention of evidence that was not presented. The attorney is not allowed to comment on the defendant's failure to take the stand as a witness in a criminal case, since any defendant has a constitutional right not to take the stand.

The closing argument may include talk about the facts and all inferences that could properly be drawn therefrom. If the attorney appears to talk about improper matters, the opposing attorney may object and the judge will thereupon rule upon the objection. If the offending remarks are deemed seriously prejudicial, the opposing attorney will ask that the jury be instructed to disregard them, and in some instances may move for a mistrial, i.e., that the present trial be terminated and the case be set for retrial at a later date.

The defendant's attorney will next present the closing argument on behalf of the defendant. Statements made in the opening argument are usually answered, defects in the plaintiff's case are pointed out, and facts favorable to the defendant are summarized. Thereafter, the plaintiff or state is entitled to the concluding argument in which the attorney answers the defendant's argument and makes a final appeal to the jury.

If the defendant chooses not to make a closing argument, which sometimes occurs, then the plaintiff or state loses the right to the last argument.

In the Jury Room

At the conclusion of arguments the jury is taken to the jury room by the bailiff to begin its deliberations. The bailiff will sit outside and not permit anyone to enter or leave the jury room. Ordinarily, the court has furnished the jury with written forms of all possible verdicts which it might reach, so that when a decision is reached the jury can choose the proper verdict form. If the decision is unanimous, it will be signed by the foreman of the jury and returned to the courtroom.

In a criminal case the decision of the jury must be unanimous. In New Mexico civil cases, only ten out of twelve jurors or five out of six jurors need agree to reach a verdict. However, all federal courts require a unanimous verdict. No one may attempt to tamper with the jury in any way while it is

deliberating.

If the jurors cannot agree on a verdict, the jury is called a hung jury, and the case may be retried before a new jury at a later date.

If the jury is out overnight the members will sometimes be housed in a hotel and secluded from all contacts with other persons. This is commonly called sequestering the jury. The jury may take the judge's instructions to the jury room, and on rare occasions, the jury may return to the courtroom in the presence of counsel and parties for both sides to ask a question of the judge having to do with the instructions or the evidence. In such instances the judge may reread all or certain of the instructions previously given, or supplement or clarify them by further instructions or answer limited questions regarding other matters. In most cases, the jury will be excused to go home at night, especially if there is no objection by either party.

Verdict

Upon reaching a verdict, the jury returns to the courtroom with the bailiff and in the presence of the judge, the parties, and their respective attorneys, the verdict is read aloud in open court by the court clerk. Attorneys for either party, but usually the losing party, may ask that the jury be polled, in which case each individual juror will be asked if the verdict is his or her verdict. It is rare for a juror to say that the verdict was other than that reported to the court. When the verdict is read and accepted by the court, the jury is dismissed, and the trial is concluded.

Motions After Verdict

Some motions are permitted after the verdict is rendered. A motion for judgment non obstante veredicto (a motion for judgment n.o.v.) may be made after verdict and before judgment. This motion requests the judge to enter a judgment for one party notwithstanding the verdict of the jury. Ordinarily this motion raises the same questions as could be raised by a motion for directed verdict. A motion for a new trial sets out alleged errors committed in the trial and asks the judge to grant a new trial because of those errors.

Judgment

The verdict of the jury is ineffective until the judge enters the written judgment upon the verdict. In a civil damage action this judgment might read:

"It is, therefore, ordered, adjudged, and decreed that the

plaintiff do have and recover the sum of $1,000 of and from the defendant."

At the request of the plaintiff's lawyer in a civil suit, the clerk of the court will deliver a paper called an execution to the sheriff, commanding that the property of the defendant be taken and sold, with the proceeds of the sale being applied to the amount of the judgment.

Sentencing

In a criminal case, if the defendant is convicted, the judge will set a date for sentencing or may rule at that time. In the meantime, the judge may order a pre-sentence report and may consider matters to reduce the severity of the sentence.

Rights of Appeal

If a party thinks that the decision of the lower court was incorrect, an appeal to a higher court may be filed. Appeals in either civil or criminal cases may be on such grounds as errors in trial procedure and errors in substantive law, i.e., in interpretation of law by the trial judge. These are the most common grounds for appeals to higher courts although there are others.

The state's right of appeal in a criminal case is very limited. It may appeal a decision of the trial court on matters such as the dismissal of a criminal complaint or a pre-trial order excluding evidence; however, it cannot appeal when new evidence of guilt is found after the defendant has been acquitted. Moreover, the state is powerless to bring the defendant to trial again on the same charge. The Constitutions of the United States and of New Mexico prevent retrial under provisions known as double jeopardy clauses.

Criminal defendants have a further appellate safeguard. Those convicted in state courts may seek relief by appeal to the United States Supreme Court on grounds of violation of constitutional rights or by asking for a writ of habeas corpus in the federal court. This privilege serves to impose the powerful check of the federal judicial system upon any abuses that may occur in state criminal procedures.

The record on appeal consists of the papers filed in the trial court and the court reporter's transcript of the evidence. The latter is called a transcript on appeal and must be certified by the reporter and clerk to be true and correct. Only so much of the record need be included as will properly present the questions to be raised on appeal.

APPEAL

Statutes or rules of court provide for procedure on appeals. Ordinarily, the party appealing is called the appellant, and the other party, the appellee. In certain types of cases the party asking for a review is called the petitioner and the other party is called the respondent.

The appeal is started by filing the notice of appeal in the proper appellate court within the time prescribed. Then the transcript of the record is filed. This filing begins the running of the time within which the appellant must file a brief, which is a memorandum setting forth the reasons and the law upon which a reversal of the trial court decision is sought.

The appellee then has a specified time within which to file an answer brief. Following this, the appellant may file a second brief, or brief in reply to the appellee's brief.

When the appeal has been fully briefed, the case may be set for hearing on oral argument before the appellate court. Either party may petition the court for oral argument. Appeals may be submitted on the briefs without oral argument. Courts of appeal do not hear new evidence, and indeed it is unusual for any of the parties to the case to attend the hearing of the oral argument.

Supreme Court cases are assigned to a panel of three judges by the clerk of the court on a rotation basis. The judges do not know in advance which cases they may be assigned. After the transcript and briefs have been filed, most cases are set for oral argument. The judges on the panel hear the oral arguments and confer on the issues presented. Then the judge who is assigned to author the case writes an opinion. After the opinion is written, the other judges on the panel review it and either agree or disagree. If any one of them disagrees, then the case is submitted to the remaining members of the court for participation. Three judges must concur as a majority before a case is final. Those who do not agree with the majority may dissent.

In the Court of Appeals, the appeals also are assigned to a panel of three judges. Not all cases are scheduled for oral argument. Unlike the Supreme Court, a majority of the judges on the Court of Appeals do not have to agree on an opinion; only a majority of the panel of three need concur. If the panel cannot agree on the disposition of a certain case, a single judge may dissent and the opinion is final with a two-to-one majority.

An appellate court will not weigh evidence and generally will reverse a

trial court only for errors of law. Not every error of law will warrant a reversal. Some are harmless errors, i.e., the rights of a party to a fair trial were not prejudiced by them. However, an error of law, such as the admission of improper and persuasive evidence on a material issue, may constitute a prejudicial and reversible error.

Appellate Opinion

The decision of the appellate court may be returned either by an order or by an opinion. The court affirms a case by an order when the law is clear and the trial court correctly applied the law. On rare occasions, a suit is summarily reversed by order. This generally happens when there is an obvious legal precedent which the lower court did not follow.

The courts render a full written opinion when the law is unsettled or when the lower court misapplied the law to a given set of facts. Since New Mexico is a fairly young state, its case law (or previous opinions written by the Supreme Court of Court of Appeals) is limited. Many problems arise which the legislature has not considered and which have not been previously decided by the courts. The court then considers all the state laws on the subject, the rulings of courts in other states, and how the problem affects the people in this state. The court then makes a ruling and its decision becomes the law.

An opinion generally sets out the important facts and the ruling made by the lower court which is being challenged. The court will then proceed to discuss the various issues that the parties raised and the current status of its holding and becomes the law of the case and the ruling which the lower court must follow. It also sets a precedent for similar situations in which the same problem arises. After all such issues are decided, the court either affirms or reverses the decision of the lower court and directs that court to change the judgment to conform to the opinion, or the court sends the case back to the lower so that it can take some additional action, such as hold a new trial or listen to more evidence on a given point.

TIPS FOR USING LAWYERS & LAW-RELATED RESOURCE PEOPLE IN THE CLASSROOM

1. A few of the many vehicles for using lawyers and resource people in the classroom:

   a. Traditional lecture (usually can't be used for more than 20 minutes; start with an item which catches student interest, keep presentation relevant to their lives, avoid jargon).

   b. Question and answer (the session should be focused on a single area and students should be prepared by their teachers in advance of your visit.

   c. Students interview lawyers or resource people as if reporters at a press conference (they can write up the interview for their school paper).

   d. Participate in a role play, either in your regular role or a different role.

   e. Help prepare for, enact and debrief a mock trial or moot court.

   f. Serve as a moderator for a panel or debate.

   g. Participate in a simulation game.

   h. Assist in debriefing a film (e.g., one of the many excellent films of the Bill of Rights).

   i. Discuss several cases, either pending before the courts or landmark or other interesting decisions.

   j. Take students on a field trip (e.g., to court, detention facility, etc.) and/or answer questions arising out of a field experience.

   k. Invite students to visit you and others who work in the justice system to heighten their consciousness.

   l. Consider establishing a 'hot line' relationship between attorneys and a class or school. Although occasional visits may form a part of this relationship, the attorney(s) will be available by phone on a regular basis to answer questions arising in class which the teacher cannot answer or does not feel comfortable answering.

2. What the teacher needs to tell the resource person (in a pleasant, relaxed, non-hurried, phone discussion or meeting at a mutually convenient time):

   a. The goals and objectives of the unit being taught and, specifically, what contribution the resource person can make.

   b. Generally what students are/will be studying just before and after your visit so you can gear your presentation to insure continuity. While recognizing that the teacher is the professional responsible for the classroom, you may be able to make some suggestions as to how best to 'prep' students for your visit.

   c. How many students will be in the class, their goals and approximate ability levels.

d. Date, time and exact location for the visit (you should also check with the school principal or building administrator when you arrive).

e. Phone number of teacher and/or school office in the event you must cancel.

3. Tips to pass on to resource people:

a. Don't schedule visits for times when a cancellation is in any way forseeable. While last minute cancellations are sometimes unavoidable and totally unexpected, they can ruin a teacher's plans and result in his/her not being willing to use lawyers as classroom resources in the future.

b. Try to contact teachers after you visit their classes. Ask for their sincere, candid evaluation of your presentation. This is the best way to improve your visits.

c. As to controversial issues, within the bounds of reason and common sense, these are educationally valuable to include in your lesson as long as the presentation raises all sides of the issue. Try to anticipate any problems in this area and discuss them with the classroom teacher before your visit.

d. Don't feel constrained to defend aspects of the system you feel are unfair. Be honest and straightforward. Kids will understand.

e. Although teachers and students will look to you as a person "with all the answers," don't be afraid not to have an answer at your fingertips. But, if you promise to find an answer for the class, don't forget to do so.

f. In a similar vein, don't forget that you can (and should) be a question-asker, not just answer provider. Ask not only questions which have known answers, but also consider raising troublesome policy questions (once you have laid an appropriate foundation) for which there are no clear-cut answers. Law-related classes should be at least as much process (reasoning) as information-providing in their orientation.

g. Use a variety of teaching strategies during your classroom visit. Too much of even a good technique can be boring.

h. Don't be too esoteric. Put yourself in the students' shoes and think from that perspective about what they will find interesting.

i. Relax and be yourself. If humor comes easily to you, don't hide it in class.

j. Don't overdress. Kids will know (or at least think) you have a three-piece suit anyway.

k. You are not a substitute teacher. Don't let the teacher set up a situation in which you are.

*Material adapted and used with permission of National Street Law Institute

COURT OBSERVATION SHEET

Students can complete this during or after the visit.

1. What type of court did you visit?

2. What kind of trial did you observe (civil or criminal)?

3. What were the issues involved in the case?

4. Name the witnesses that testified when you were there. What did they say that was important to the case?

5. How is this trial different from trials you have seen on television?

6. What was the most valuable thing you learned?

7. What questions do you have about what you observed?

This mock trial is an excellent vehicle for teaching students the fundamentals of trial procedure before introducing all the elements of attorney questioning techniques. Students can read it like a play. This works well with both middle and high school students.

When facts are in dispute, the law usually provides for a trial, often before a jury. Often at a trial various witnesses will present *conflicting* stories. Finding out at trial what "really did happen" when people are presenting conflicting stories is a big job. The law uses several techniques to try and make this process as accurate as possible. There are usually lawyers for each side to present the case. There are complex rules of evidence regulating the information that can be presented to the jury. There are rules concerning who wins if the jury is equally convinced by evidence of each side. There are certain "presumption rules": A person is presumed innocent until proved guilty beyond any "reasonable doubt"; a person is presumed sane until proved insane.

But even with all these rules and processes for finding the facts, can judges and jurors always know the *true* facts? Keep this question in mind as you read about what happened at trial in the following case.

The Case of *Duncan* v. *Wilson*

Suppose an automobile accident like the one described below led to a lawsuit in which you are on the jury. The accident occurred about two years ago. It involved a VW, driven by Ed Wilson, then a high school senior, and a Ford station wagon, driven by Mrs. Helen Duncan, a housewife. There is no dispute about the damage that resulted from the accident; it is agreed that Ed suffered a broken wrist and total destruction of his VW. His doctor bills came to $150; the VW was worth $1500. Mrs. Duncan received a hairline fracture of a vertebra and had auto repair bills of $300. Her medical expenses were $4500.

What is being contested at trial is the matter of who caused the accident. Under the law of the state where the accident occurred, the party who carelessly caused the accident is responsible to pay for the damages to the other party. And both parties agree on this rule of law. Mrs. Duncan has sued Ed Wilson claiming he should pay her $4800 because his carelessness caused her injury in that amount. Ed in his own defense claims the accident was caused by the carelessness of Mrs. Duncan and in turn asks that the court make her pay $1650 for the cost to him.

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(The class should pick six, nine, or twelve students to sit as the jury who decides this case after other members of the class role-play the following trial scene.)

JUDGE: Your next witness, please.

ATTORNEY FOR MRS. DUNCAN: I call the plaintiff, Mrs. Helen Duncan, to the stand.

BAILIFF: State your name.

MRS. DUNCAN: Helen Q. Duncan.

BAILIFF: Do you swear to tell the truth, the whole truth and nothing but the truth?

MRS. DUNCAN: I do.

BAILIFF: Be seated.

DIRECT EXAMINATION

(BY ATTORNEY FOR MRS. DUNCAN)

Q. Mrs. Duncan, what do you do for a living? A. I am the mother of three young children, and I am a housewife.

Q. Are you licensed to drive in this state? A. I am.

Q. And how long have you been so licensed? A. Well, let's see, I guess sixteen years.

Q. Is this your first accident? A. Yes, so far as I can recall it is my first real accident. I suppose I've bumped the car parking a few times.

Q. Were you in your car on the morning of October 4 the year before last? A. I was.

Q. Please explain what happened to you. A. Well, it was a rainy morning, so I took my children in the car to the school bus stop. I pulled off Elm Road on the shoulder about ten yards before Elm Road intersects with Green Street at the school bus stop to wait.

Q. Which direction on Elm Road were you facing? A. I was headed south.

Q. What sort of roads are these, four lanes, city streets, or what? A. Oh, no. This is a residential section, two-lane roads with a 30-mile speed limit. Anyway, the bus came and the children got on. I watched the bus pull away down the street and then started for home.

Q. Explain just what you did when you say you started for home. A. Well, the quickest way home was to turn left at the intersection that was in front of me and proceed home around the block. I looked in my rear-view mirror and saw that the only car coming was a little Volkswagen that was quite far back. So I pulled out and started to turn left.

Q. Did you do anything else before you pulled out? A. Oh, yes, I signalled left. I always use my signal lights.

Q. Then what happened? A. I had no sooner started my left turn and I heard an awful screaming of tires. Then crash. As I looked, I thought that Volkswagen was coming right through my door into the car. The next thing I remember I was in the hospital.

Q. Just one more question, Mrs. Duncan; you said you checked your rearview mirror before pulling out. If you saw the Volkswagen coming, why did you pull out? A. Oh, that is a long, straight stretch of road. I saw the VW, but it was quite far back. Several hundred yards, perhaps a quarter mile. He must have been going awfully fast to have caught up.

ATTORNEY FOR MR. WILSON: Objection, your Honor. The witness's reference to the speed of Mr. Wilson's car is based on nothing more than her opinion that he was a particular distance away.

JUDGE: Objection sustained. The witness will please limit her answers to the questions posed. The jury will disregard her reference to the speed of Mr. Wilson's car.

ATTORNEY FOR MRS. DUNCAN: Thank you, Mrs. Duncan; that's all I have.

JUDGE: You may cross-examine.

CROSS-EXAMINATION

(BY ATTORNEY FOR MR. WILSON)

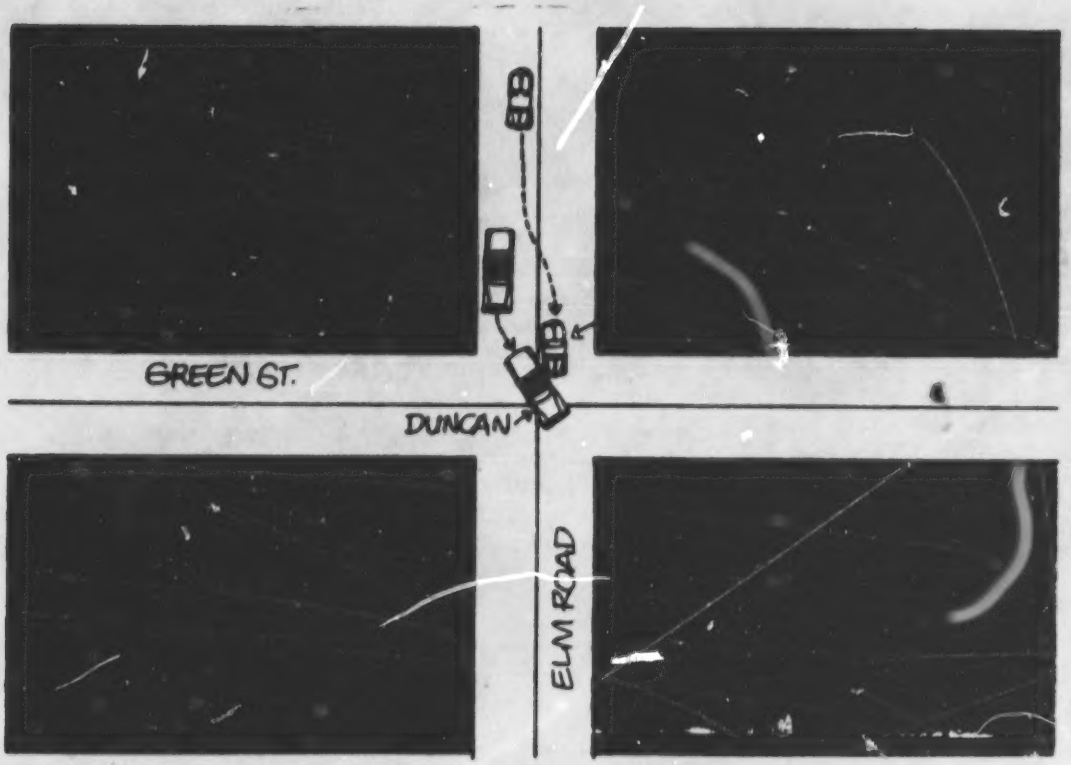
Q. Mrs. Duncan, you said you were pulled off Elm Road about ten yards from the intersection when you started to turn left through the intersection on Green Street. How far off the road were you when you started this pull-out, left-turn maneuver? A. I was almost completely off the road to start. I think all four wheels were off the pavement when I started.

Q. You said you signalled left before you pulled away from the side of the road? A. Yes, with my flashing light.

Q. How long ago did this accident occur? A. Oh, now I guess it has been almost twenty months.

Q. Is your memory so good that you normally remember each turn signal you make while driving for twenty months? A. I always use my turn signals, and I remember this one in particular. It's not every day some fool crashes into you.

Q. Just one more question, Mrs. Duncan. You said you checked your mirror and saw Mr. Wilson approaching, but you pulled out anyway because he was several hundred yards or maybe even a quarter of a mile down the straight stretch behind you? A. That's right.



Q. Several hundred yards or even a quarter mile? How many hundreds of yards would you say Mrs. Duncan? A. Oh, at least five, six, maybe even seven.

Q. Thank you, Mrs. Duncan. Incidentally, you know, of course, there are only 440 yards in most quarter miles. No further questions.

ATTORNEY FOR MRS. DUNCAN: Objection, your Honor. That comment was made simply to badger the witness.

JUDGE: Objection overruled. Please step down, Mrs. Duncan. That concludes the evidence for Mrs. Duncan's side, does it not?

ATTORNEY FOR MRS. DUNCAN: It does, your Honor.

JUDGE: Counsel, you may proceed with evidence for Mr. Wilson's case.

ATTORNEY FOR MR. WILSON: Thank you, your Honor. We have only one witness to call to the stand, Mr. Wilson.

BAILIFF: State your name.

MR. WILSON: Edward W. Wilson.

BAILIFF: Do you swear to tell the truth, the whole truth, and nothing but the truth?

MR. WILSON: I do.

BAILIFF: Be seated.

DIRECT EXAMINATION

(BY ATTORNEY FOR MR. WILSON)

Q. What do you do for a living, Ed? A. I'm training to be an electrician. Right now I'm an apprentice.

Q. And at the time of the accident in question what did you do? A. I wasn't employed. I was a senior in high school.

Q. Will you please explain to jury what happened to you on your way to school on the morning of October 4 the year before last? A. Well, I was driving my VW along the same route I always took to school, coming from north to south down Elm Road. As I approached the intersection of Green Street, I saw a car standing by the side of Elm Road, off the right-hand shoulder, a few yards before the interesection. In order to be sure and avoid it, I noticed that no cars were coming in the opposite direction, and I pulled into the left-hand lane. When I was only a few feet from the back of the car that was standing, it darted out into the road.

Q. If you were in the left lane at this time, how did this car obstruct you? A. The car didn't just pull out. It shot out sort of diagonally crossing both lanes of Elm Road as if to make a left turn on Green Street.

Q. Did this car signal before it pulled out? A. If it did, I sure didn't see it. And I was looking right at it.

Q. Ed, how fast were you going as you were approaching the intersection of Green Street at Elm Road on that morning? A. Quite frankly, sir, I wasn't looking at the speedometer. But they give a lot of tickets out in that area, so I always keep it right around the speed limit there, which is thirty.

Q. One other thing. Did you signal to switch lanes when you pulled into the left lane to go by Mrs. Duncan? A. I don't think so. But if I had, it would have looked like I intended to turn left, and I intended to go straight through that intersection.

ATTORNEY: That's all. Your witness.

CROSS-EXAMINATION

(BY ATTORNEY FOR MRS. DUNCAN)

Q. Mr. Wilson, are you familiar with the system of white and yellow road center lines in this state that dictate when a driver is free to pass and when a driver must stay in line? A. Yes, solid lines mean no passing; broken lines mean pass with care.

Q. That's right, solid lines mean no changing lanes. Now are you familiar with any intersection in this state where the road immediately before an intersection has a broken line? A. I don't think so.

Q. Does Elm Road have such a broken line just as it approaches Green Street? A. I don't believe so.

Q. Then would you agree that a car approaching this intersection on the left-hand side was not in the proper position in the road?

ATTORNEY FOR MR. WILSON: I object, your Honor. We are not holding traffic court here. Mr. Wilson has already explained why he was where he was when the accident happened.

JUDGE: Well. . . .

ATTORNEY FOR MRS. DUNCAN: Your Honor, I'll withdraw that last question.

JUDGE: The witness need not answer the last question. Proceed.

Q. Mr. Wilson, do you recall the exact time of the accident? A. My car clock stopped at 8:20 a.m., so I think that was probably the moment of impact.

Q. You said you did not notice your speedometer. Is that correct? A. That's right, but I don't think I was breaking the limit.

Q. Are you a pretty good judge of speeds? Say, could you just sort of tell without a speedometer the difference between thirty, or forty, or even fifty miles per hour? A. I guess so. And anyway, I said already that I almost never break the limit there on Elm Road. It's heavily patrolled.

Q. Almost never. When you were a senior in high school, what time did students have to be in their homerooms in order to avoid being tardy—at the latest? A. I don't remember. About 8:30.

Q. Does 8:25 sound more like it? A. Yes, I guess that is correct.

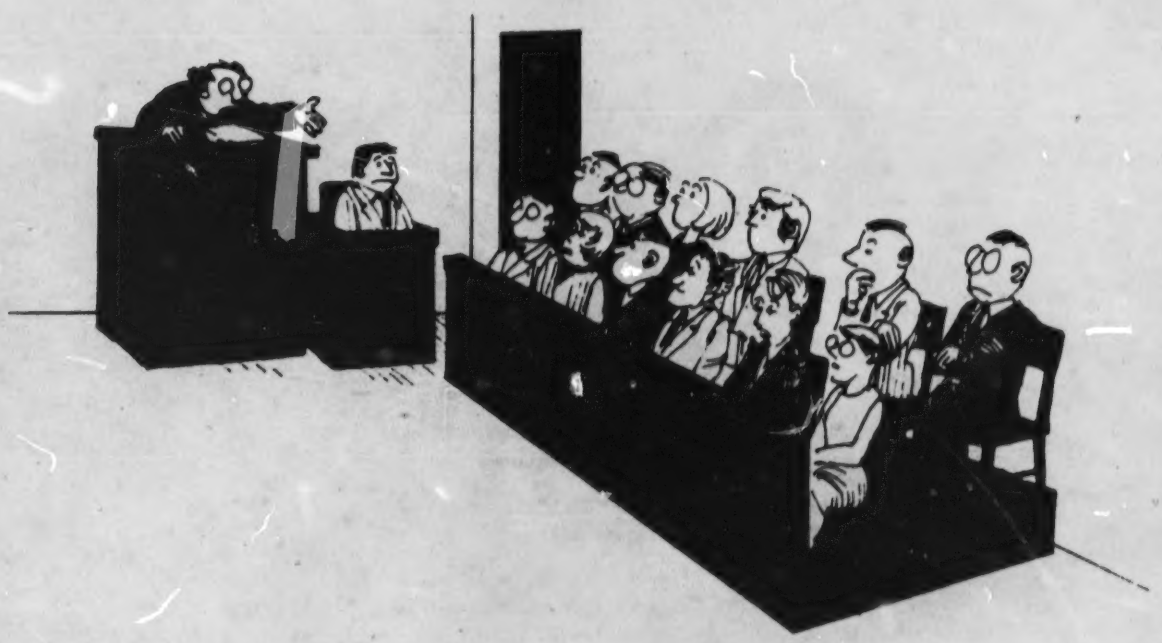
Q. And how long would it take to get from the intersection of Elm and Green to the high school parking lot *if* one were doing only thirty miles per hour? Or to put it another way, do you think perhaps it could only be done in five minutes if one were travelling a good bit faster than thirty miles per hour? A. I haven't much thought about it. I suppose one could drive thirty and simply be late to school.

ATTORNEY: No further questions.

. . .

At this point in the case the lawyers for each side would speak to the jury and summarize their evidence. Then the judge would "instruct" the jury about the law that applies to the case and send them to reach a verdict.

JUDGE: Ladies and gentlemen of the jury, it is now my duty to explain the law for this case to you. You have heard conflicting testimony as to what are the facts in this case. It is your duty to determine what are the facts of this case and then to follow my instructions concerning the law. In other words, it is your duty to find the facts and apply the law, as I will now explain it to you.



This is a negligence case. According to the law of negligence, if one person's negligence causes injury to another, the first person must pay to make up for the harm he has done. In this case each party claims the other's negligence has caused injury. Mrs. Duncan claims $4,800 in injury to her; Mr. Wilson claims $1,650.

Now, what is negligence? Negligence is carelessness or the exercise of less care than a reasonable person would have used. In looking at the evidence, if you find the facts to be that Mr. Wilson's negligence caused Mrs. Duncan's injury, you must return a verdict for Mrs. Duncan for whatever you decide is the amount of her injury. On the other hand, if you find Mrs. Duncan's negligence caused Mr. Wilson's injury, you must return a verdict for Mr. Wilson for whatever you decide is the amount of his injury. Or if you find that the injuries were caused by the negligence of both parties, you must determine neither side is entitled to recover from the other.

You will now retire to the jury room to decide on your verdict. You first will elect a foreman to guide your discussions of the evidence. Then you will discuss the evidence until 9 of the 12 of you can agree on a verdict.

1. What verdict did your jury reach?
2. What specific findings of fact was this verdict based on? Do you know if these findings of fact are an accurate statement of what truly did happen in this case?
3. What limit of law do you see at work here?

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Pro-Se Courts

GUIDELINES FOR CONDUCTING PRO-SE COURTS

A resource person who is asked to conduct a moot court or mock trial for elementary-level students may wish to try a pro-se court procedure. The following description was written for teachers. Attorneys and other resource persons can lead the activity as well or better.

The four cases presented in the following pro-se court simulations concern occurrences and situations that young children are likely to be both familiar with and interested in. We have also selected three additional cases which attorneys might consider trying.

* * * * * * * * * * * *

Pro-Se Court: A Simulation

THE complexities of courtroom procedure and rules of evidence often dissuade the classroom teacher from using the mock trial strategy. As a result most children are never exposed to this highly motivating experience.

In pro se courts, complicated rules of evidence are reduced to common sense and procedure is kept at a minimum. A student observing in this courtroom can focus on the essence of judicial decision-making: deliberation on the issues of a case.

This pro se court simulation has been designed to provide an opportunity for students to role-play a case by starting with a minimum of roles: judge, plaintiff, and defendant. Once each student has played each of these roles the observer and attorneys' roles are added. In this way the mock trial is broken down and then rebuilt. The simulation offers a "stepping stone" to using the mock trial.

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Instructions To The Teacher

PART I

1. The simulation can be played with any size class. The diagrams are based on 30 students.
2. Arbitrarily divide the class into ten groups of three.
3. Have each child in each group decide upon a role – judge, plaintiff, or defendant. They will rotate roles for three rounds in the first part of the simulation.
4. Using the role descriptions, read the brief statements about each role.
5. Choose one case from those given and distribute only the FACTS of the case to all of the groups. Do not disclose the ISSUE or the DECISION at this time.
6. Have the children role-play within their individual groups. The plaintiff speaks first, then the defendant. The judge may ask questions before he makes his decision and gives his reasons.
7. Have judges explain decisions to the whole class.
8. Read ISSUE and DECISION to class. These are offered as samples and are not to be taken as absolute.
9. Rotate roles and repeat the process twice with a new case each time.
10. The following questions are suggested for debriefing the simulation:
    1. *Which is the most difficult role to play? Why?*
    2. *How well (realistically) did the participants play their roles?*
    3. *What were the issues in this case?*
    4. *Were the judge's decisions "fair"?*

PART II

This simulation may be role-played the following day:

1. Divide the class into groups of six (see diagram).
2. Explain that three new roles will be added to the three played in the prior simulation:
   Attorney for Plaintiff
   Attorney for Defendant
   Observer
   Read the descriptions of each.
3. Assign these six roles to each group:
   Judge
   Plaintiff
   Defendant
   Attorney for Plaintiff
   Attorney for Defendant
   Observer
4. One case can be role-played.
5. Distribute the case to the plaintiff and his attorney, and the defendant and his attorney. They should have five minutes to prepare their case apart from the judge and observer. During this five minutes you should meet with the judge and observer to go over their roles.
6. Role-play the pro se court according to the following steps:
   A. Attorney for plaintiff presents his case.
   B. Attorney for defense presents his case.
   C. Judge may ask questions
   D. Decision and reasoning by judge
   E. Observer reports

Role Descriptions

Judge — The judge must see that both sides have a fair chance to present their cases. The judge should not interrupt or dominate the proceedings. In Part II, when the parties are represented by attorneys, he must insist that the attorneys stick to fair rules. The judge must decide whether a law has been broken. If so, he must uphold the law.

Plaintiff — This person has accused the defendant of doing or not doing something which he thinks is unfair. He is the one who has asked the court to hear the case. In a pro se court the plaintiff is asking the judge to make the defendant pay him an amount of money (under $300.00). He speaks to the judge first.

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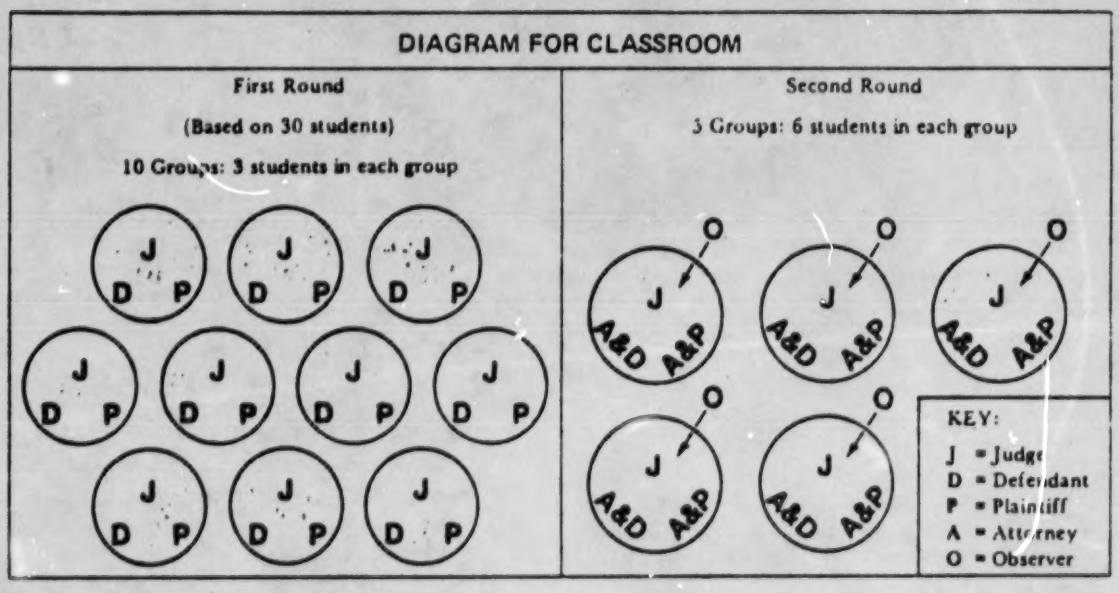
DIAGRAM FOR CLASSROOM



Defendant This person has been accused by the plaintiff. He has been summoned into court and is probably appearing against his will. He listens to the accusation and then either tries to prove it untrue or gives reasons to justify his actions.

Plaintiff's Attorney He tries to prove that the accusation is true. In a pro se court this attorney may ask questions of fact of the defendant and the plaintiff. He may not ask for their opinions. He speaks first.

Defendant's Attorney He listens to the plaintiff's attorney and then tries to show that either the defendant did not do what he was accused of doing or that he had good reasons for doing it.

Observer Your task is to listen carefully to the testimony of the plaintiff and the defendant and try to answer the following questions:

1. ***What is the complaint? In other words, what is the plaintiff accusing the defendant of doing, or not doing?***
2. ***What did the defendant say in response? Did he admit to the accusation? Were there reasons to justify his action?***
3. ***Did the judge ask any questions? If so, what were they?***
4. ***What was the judge's decision? Did he give any reasons for his decision?***
5. ***Would you have made the same decision? Why or why not?***

FIRST CASE

Facts

1. Plaintiff is the assistant to a newspaper delivery boy.
2. Defendant is newspaper delivery boy.
3. Defendant became sick and asked his helper, the Plaintiff, to deliver fifty papers. Plaintiff agreed to deliver the papers for $2. Plaintiff delivered papers but did not place them in mail boxes or inside halls. Twenty-five newspapers were ruined in the rain and Defendant refused to pay the $2 to the Plaintiff. Plaintiff sues.
4. What is the issue?
5. How would you decide? Why?

Role-play before distributing the following:

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Issue

Did the assistant fail to live up to his agreement? If so, what would be the appropriate remedy?

Decision

It appears from the facts that the Plaintiff did what he had agreed to. He agreed to deliver the papers, and did just that. The agreement did not specify that he had to put papers in the mailboxes or inside halls. On the other hand, it is important to remember that the Plaintiff was an assistant to the Defendant. Since he was an assistant, he knew from experience that delivering the papers included putting them in the mailboxes and in the halls. Therefore, it is clear that the Plaintiff should have done what he knew from his experience. It can be concluded, therefore, that the Plaintiff did not fully live up to the agreement. What is appropriate as a remedy? Only twenty-five papers were damaged. Therefore, half of the papers did get delivered successfully. Judgment for Plaintiff for $1. One dollar is appropriate since the agreement was for fifty papers and twenty-five people got their papers in good condition.

SECOND CASE

Facts

1. Plaintiff is a babysitter.
2. Defendant is a parent.
3. The Plaintiff agreed to babysit for the Defendant's two children for fifty cents per hour. When the babysitter arrived there was a third child, a cousin, present. Plaintiff said nothing about an increased rate but demanded 75 cents per hour when Defendant returned home two hours later, claiming the rate to be 25 cents per hour per child. The Defendant refuses to pay the additional 25 cents per hour. Plaintiff sues.
4. What is the issue?
5. How would you decide? Why?

Role-play before distributing the following:

Issue

Is the Plaintiff entitled to the additional 25 cents per hour?

Decision

From the facts, it appears the Plaintiff had agreed to babysit for 50 cents per hour. When the Plaintiff arrived on the job, and saw an additional child, he did not say he wanted more money. The Plaintiff had never told the Defendant that he expected 25 cents per child when they made the agreement. It was, therefore, unfair for the Plaintiff to demand this amount after the fact. The Defendant understood that the charge was 50 cents per hour and not 25 cents per child. To give the 25 cents additional fee per hour would be unfair to the Defendant. Judgment for the Defendant

THIRD CASE

Facts

1. Plaintiff is a comic book collector.
2. Defendant is a classmate.
3. Plaintiff loans ten comic books to Defendant for one week. The books are in very good condition and Plaintiff warns Defendant to be careful of them. The Plaintiff had paid 25 cents a copy for the books or a total of $2.50. Defendant returns five comic books in good condition but five are torn and ripped. Plaintiff demands $2.50 of the Defendant to cover costs. Defendant refuses. Plaintiff sues.
4. What is the issue?
5. How would you decide? Why?

Role-play before distributing the following:

Issue

Is the Plaintiff entitled to damages if Defendant returns loaned comic books in a condition different from condition the books were in when they were received?

Decision

When one loans an item to someone he is entitled to get it back in a condition reasonably similar to the condition it was in when he loaned it. In this case, five of the books were returned in a torn and ripped state. It is obvious that the Defendant did not exercise reasonable care while he read the books, and it is, therefore, unfair to return them in poor condition. What would be

the measure of damages? If it can be shown that the Plaintiff could get the same comic books for 25 cents each, the Plaintiff would be entitled to $1.25 and the Defendant could keep the torn books. If the books were irreplaceable, the Plaintiff would be entitled to the $2.50 he sought. Judgment for Plaintiff.

FOURTH CASE

Facts

1. Plaintiff was the owner of a three speed bicycle.
2. Defendant was the owner of a bicycle repair shop.
3. Plaintiff brought bicycle into shop when the gears didn't shift properly. Plaintiff told Defendant-owner to fix the gears as well as possible but not to do anything that cost more than $25. When Plaintiff came to pick up bicycle the next week, he found that the shop had installed brand new gears and had sold his broken gear shift to a bicycle used parts company. The Defendant told Plaintiff that he owed $50. The Plaintiff told Defendant that he would pay $25 since that was the amount he had said was as high as he could go. The Defendant said he would not get the bicycle back until $50 was paid. Plaintiff sues.
4. What is the issue?
5. How would you decide? Why?

Role-play before distributing the following:

Issue

Can the Defendant do more than he was authorized to do by the Plaintiff without first making an additional agreement with Plaintiff?

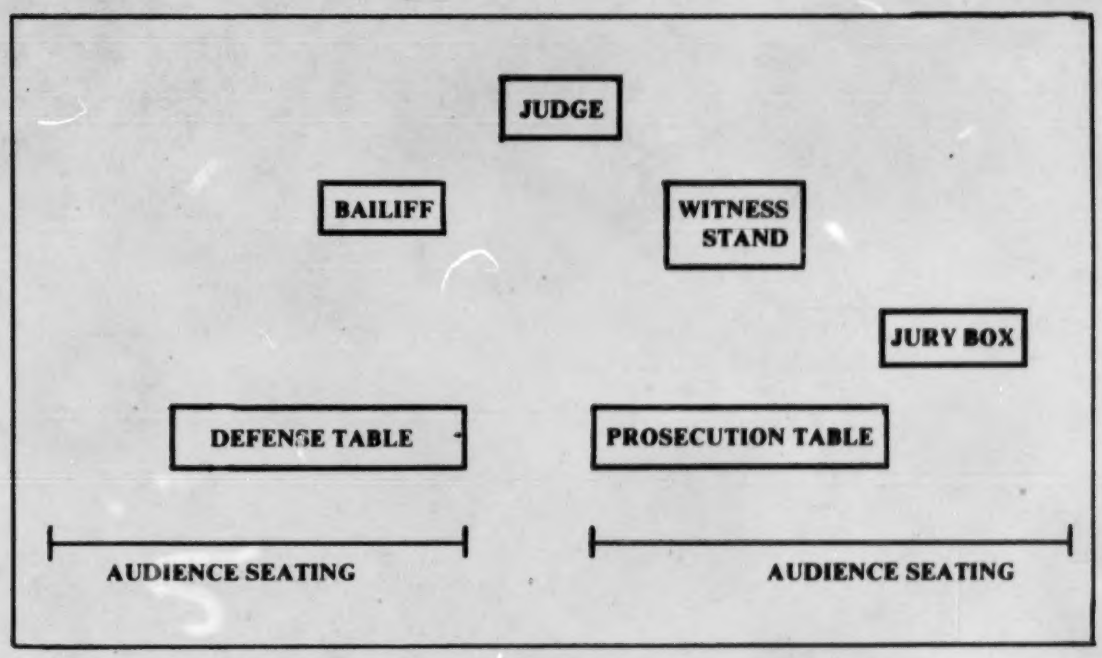
Decision

No. The bicycle repair shop cannot take unfair advantage of a customer. The Plaintiff-customer had placed limitations on what the shop could do. The shop cannot do more without consulting customer. Since it was too late to return the bicycle in the condition in which it was brought in, the shop must give the bicycle with the new gear to the Plaintiff for $25. Judgment for Plaintiff.

TRIAL PROCEDURES

Before participating in a mock trial, it is important to be familiar with the physical setting of the courtroom,as well as with the events that generally take place during the exercise and the order in which they occur. This section outlines the usual steps in a "bench" trial--that is, a trial without a jury.

COURTROOM LAYOUT



PARTICIPANTS

- The Judge
- The Attorneys

  Prosecutor - Defense (Criminal Case)

  Petitioner - Respondent (Civil Case)

- The Witnesses

  Prosecution - Defense (Criminal Case)

  Petitioner - Respondent (Civil Case)

STEPS IN MOCK TRIAL

- <u>The Opening of the Court</u>

  Either the clerk of the Court or the judge will call the Court to order.

  When the judge enters, all participants should remain standing until the judge is seated.

  The case will be announced...i.e., "The Court will now hear the case of _____vs._____."

  The judge will then ask the attorneys for each side if they are ready.

- <u>Opening Statements</u>

  (1) Prosecution (in criminal case)
  /Petitioner (in civil case)

  After introducing himself/herself and colleagues to the judge, the prosecutor in a criminal case (or petitioner's attorney in a civil case) summarizes the evidence which will be presented to prove the case.

  (2) Defense (in criminal case)
  /Respondent (in civil case)

  After introducing himself/herself and colleagues to the judge, the defendant's attorney in a criminal case (or respondent's attorney in a civil case) summarizes the evidence for the Court which will be presented to rebut the case the prosecution has made.

- <u>Direct Examination by Prosecution</u> (Petitioner's Attorney(s)

  The prosecutor(s) (petitioner's attorneys) conduct direct examination (questioning) of each of its own witnesses. At this time, testimony and other evidence to prove the prosecution's (petitioner's) case will be presented. The purpose of direct examination is to allow the witness to narrate the facts in support of the case.

  Note: The attorneys for both sides, on both direct and cross-examination, should remember that their <u>only function is to ask questions</u>; attorneys themselves may not testify or give evidence, and they must avoid phrasing questions in a way that might violate this rule.

Cross-Examination By The Defense (Respondent's Attorneys)

After the attorney for the prosecution (petitioner) has completed questioning each witness, the judge then allows the other party (i.e., defense attorney) to cross-examine the witness. The cross-examiner seeks to clarify or cast doubt upon the testimony of opposing witnesses. Inconsistency in stories, bias, and other damaging facts may be pointed out to the judge through cross-examination.

- Direct Examination By The Defense (Respondent's Attorneys)

Direct examination of each defense witness follows the same pattern as the above which describes the process for prosecution's witnesses.

Cross-Examination By The Prosecution (Petitioner's Attorneys)

Cross-examination of each defense witness follows the same pattern as the step above for cross-examination by the defense.

- Closing Arguments (Attorneys)

(1) Prosecution (Plaintiff)

A closing statement is a review of the evidence presented. It should indicate how the evidence has satisfied the elements of the charge or cliam, point out the law applicable to the case, and ask for a finding (verdict) of guilty (criminal case).

(2) Defense (Respondent)

The closing statement for the defense is essentially the same as for the prosecution. Counsel for the defense reviews the evidence as presented, indicates how the evidence does not satify the elements of the charge or claim, stresses the facts favorable to the defense and asks for a finding (verdict) of not guilty (criminal case) or judgment for the defense (civil case).

THE JUDGE'S ROLE AND DECISION (VERDICT)

The judge is the person who presides over the trial to ensure that the parties' rights are protected, and that the attorneys follow the rules of evidence and trial procedure. In trials held without a jury, the judge also has the function of determining the facts of the case and rendering a judgment.

SIMPLIFIED RULES OF EVIDENCE

In American trials, elaborate rules are used to regulate the admission of proof (i.e., oral or physical evidence.) These rules are designed to ensure that both parties receive a fair hearing and to exclude any evidence deemed irrelevant, incompetent, untrustworthy, or unduly prejudicial. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial.

Formal rules of evidence are quite complicated and differ depending on the court where the trial occurs. For purposes of this mock trial competition, the rules of evidence have been modified and simplified below.

Witness Examination

- Direct examination (attorneys call and question witnesses)

  +Form of questions: Witnesses may not be asked leading questions by the attorney who calls them. A leading question is one that suggests to the witness the answer desired by the examiner, and often suggests a "yes" or "no" answer. Direct questions generally are phrased to evoke a narrative answer.

  Example of a direct question: "Mr. Bryant, what did you say to Miss Jones and what did she say to you?"

  Example of a leading question: "Mr. Hayes, isn't it true that you dislike Darryl Bryant?"

  +Character: For mock trial purposes, evidence about the character of a party may not be introduced unless the person's character is an issue in the case. For example, whether one spouse has been unfaithful to another is a relevant issue in a civil trial for divorce, but is not an issue in a criminal trial for larceny. Similarly, a person's violent temper may be relevant in a criminal trial for assault, but is not an issue in a civil trial for breach of contract.

+Refreshing Recollection: If a witness is unable to recall a statement made in the affidavit, the attorney on direct may show the document to his/her witnesses...to help the witness to remember.

- Cross-examination (questioning of the other side's witnesses)

  +Form of questions: An attorney may ask leading questions when cross-examining the opponent's witnesses. Questions tending to evoke a narrative answer should be avoided.

  Example of a leading question: "Mrs. Bryant, didn't you consider marrying George Hayes?"

  +Scope of witness examination: Attorneys may only ask questions that relate to matters brought out by the other side on direct examination, or to matters relating to the credibility of the witness.

  Example: If the plaintiff in a car accident case never mentions damages to the car, then the defense cannot ask questions on cross-examination about the repair costs.

  +Impeachment: On cross-examination, the attorney may want to show the court that the witness should not be believed. This is called impeaching the witness. It may be done by asking questions about prior conduct that makes the witness' credibility (truth-telling ability) doubtful. Other times, it may be done by asking about evidence of certain types of criminal convictions.

  Impeachment may also be done by introducing the witness' affidavit, and asking the witness whether he or she has contradicted something which was stated in the affidavit.

  Example: (Prior Conduct): "Is it true that you often hit children when they cry too much?"

  Example: (Past Conviction): "Is it true that you were convicted of armed robbery?"

(NOTE: These types of questions may only be asked when the questioning attorney has information that indicates that the conduct actually happened.)

Additional Rules of Evidence

- Hearsay

Any out of court statement which is offered to prove the truth of a fact is hearsay and except within certain limited exceptions is not permitted.

Example: Jessica Hayes says, "I heard that Darryl Bryant has a criminal record."

Though hearsay is not usually allowed at a trial, a judge may sometimes allow it if:

(2) it was said by a party in the case and contains evidence which goes against their side (e.g., in a murder case, the defendant told someone he committed the murder). This is sometimes called the "Admission against Interest" Exemptions; or (2) when a person's state of mind is an important part of the case and the hearsay consists of evidence of that person's state of mind, (sometimes called the "State of Mind" Exception).

- Witness Opinions

As a general rule, witnesses may not give opinions. Certain witnesses who have special knowledge or qualifications may be qualified as "experts." An expert may be qualified by the attorney for the party for which the expert is testifying; this means that before an expert can be asked an expert opinion, the questioning attorney must bring out the expert's qualifications and experience.

- Lack of Personal Knowledge: A witness may not testify to any matter of which the witness has no personal knowledge.

Example: If Jessica Hayes has never seen Angela Bryant with the baby, Jessica would not be able to say, "Angela is a terrible mother."

Relevance of Evidence

Generally, only relevant testimony and evidence may be presented. This means that the only physical evidence and testimony allowed is that which tends to make a fact which is important to the case more or less probable than the fact would be without the evidence. However, if the relevant evidence is unfairly prejudicial, may confuse the issues, or is a waste of time, it may be excluded by the court. This may include testimony, pieces of evidence and demonstrations that have no direct bearing on the issues of the case, or have nothing to do with making the issues clearer.

Example: The defense asks Mrs. Hayes on cross-examination, "How old are you?" (This question is permitted only if her age is relevant to the case).

Introduction of Physical Evidence

There is a special procedure for introducing physical evidence during a trial. The physical evidence must be relevant to the case and the attorney must be prepared to defend its use on that basis. Below are the basic steps to use when introducing a physical object or document into evidence in a court.*

1) "Your honor, I ask that this letter be marked for identification as Petitioner's Exhibit A." (Show letter and hand to bailiff for marking.)

2) (Show letter to opposing counsel, who may make an objection to the offering at this time.)

3) (Show letter to witness.) "Mr. King, do you recognize this document which is marked Petitioner's Exhibit A for identification?" (The witness explains what it is.)

4) "Your honor, I offer this letter for admission into evidence as Petitioner's Exhibit A.

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*It is important to understand that a particular judge may like to have lawyers follow his/her own set of procedures.

5) Get ruling from court on admission and proceed to use the letter; or you may ask the witness a series of questions about the letter, and then ask the court to admit it.

OBJECTIONS

An attorney can object any time the opposing attorneys have violated the rules of evidence. The attorney wishing to object should stand up and do so at the time of the violation. When an objection is made, the judge may ask the reason for it. Then the judge will turn to the attorney who asked the question, and that attorney usually will have a chance to explain why the objection should not be accepted ("sustained") by the judge. The judge will then decide whether a question or answer must be discarded, because it has violated a rule of evidence ("objection sustained"), or whether to allow the question or answer to remain on the trial record ("objection overruled").

Following are standard objections:

+ Irrelevant evidence: "I object, your honor. This testimony is irrelevant to the facts of this case."

+ Leading questions: "Objection. Counsel is leading the witness." (Remember, this is only objectionable when done on direct examination.)

+ Improper character testimony:

  a. "Objection. The witness' character or reputation has not been put in issue."

  b. "Objection. Only the witness' reputation/character for truthfulness is at issue here."

+ Beyond the scope of direct examination: "Objection. Counsel is asking the witness about matters that did not come up in direct examination."

+ Hearsay: "Objection. Counsel's question/the witness' answer is based on hearsay." (If the witness makes a hearsay statement, the attorney should also say, "and I ask that the statement be stricken from the record.")

+ Opinion: "Objection. Counsel is asking the witness to give an opinion."

+ Lack of personal knowledge: "Objection. The witness has no personal knowledge that would enable him to answer this question."

CRIMINAL LAW MOCK TRIAL

State v. Randall

BACKGROUND

Students have some familiarity with criminal trials due to the numerous television shows involving scenes from them. The best way to learn what criminal trials are like is by observing an actual trial. Once the class has had such an opportunity they will have a better sense of the unrealistic nature of television courtroom dramas.

The role of the jury is often minimized in television trials. Students should understand that the jury determines the *facts* in a case, primarily through their acceptance or rejection of the testimony offered by various witnesses for both sides.

The judge deals with questions of law. For example, in *State v. Randall* the judge will explain assault and self-defense, the two legal issues involved in the case, to the jurors.

Another facet of criminal prosecutions seldom revealed in television shows is the concept of the burden of proof. As a general rule, the prosecution (or the plaintiff in a civil case) must meet his burden of proof in order to prevail. In a criminal case this burden is very high. In order that innocent persons do not lose their freedom, the prosecution must set out such a convincing case against the defendant that the jurors believe "beyond a reasonable doubt" that the defendant is guilty. In most states the entire jury has to be convinced beyond a reasonable doubt, though a recent Supreme Court case permits 9–3 verdicts in state criminal cases. Understanding that a unanimous (or 9–3) decision by the jury is required will help students understand why jury deliberations are sometimes so lengthy.

In your classroom mock trial, twelve students not participating as lawyers, witnesses or the judge can be designated as jurors. Alternates may also be named in case a juror is absent. One member of the jury should be named jury foreman.

FACTS

James and Arlene go to a night club to have a drink. Randall, who has been drinking, comes up to their table and, saying he knows Arlene, tries to talk to her. James gets angry and asks Randall to

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leave. An argument takes place and a fight then occurs. The police are called and Randall is arrested for assault on James. Randall claims James caused the fight and he was only defending himself.

WITNESSES

For the Prosecution

1. James
2. Arlene

For the Defense

1. Randall
2. Phillip, a waiter in the nightclub

WITNESS STATEMENTS

James:

"I was just sitting in the place with Arlene, listening to the music, when this guy came up and started bothering her. I asked her if she knew him and she said 'No.' So I told him to split. The man was blind drunk, and he kept bothering my girl. So I stood up and told him to leave before I called the manager on him. About that time he squared off on me and when I turned to walk away he hit me."

Arlene:

"I was with my boyfriend, James, at this club when an old friend of mine, Randall, came over to our table. Randall had been drinking, and he grabbed my arm and told me to dance with him. James asked me if I knew him, and I said 'No', because James is very jealous. Then James told Randall to leave before some trouble got started. Randall didn't leave, and James stood up to argue with him. The next thing I knew, they were fighting."

Phillip:

"This one guy was sitting with this girl when Randall went over to them. I know Randall because he plays in a band here occasionally. Randall had only two drinks. I know because I was waiting on his table. Randall motioned to the girl to dance, and then he held

her arm to help her up. The guy she was with got mad and started yelling. Randall smiled and told him to be cool. The guy jumped up and grabbed Randall. Randall hit him back, and they really went to it. After that, the cops came."

Randall:

"I was at this club, walking around, checking the place out. I saw Arlene. I had been going with her for two years, but I hadn't heard from her in a couple of months. I went over to ask her how she was doing. I had had a couple of drinks, but I wasn't even a little high. I asked her to dance, and the guy with her looked at me funny. I know Arlene well, and I knew she wanted to dance with me, so I took her by the arm. Then this guy sitting with her started to confront me. I told him I didn't want any trouble. Then he jumped up and before I knew it, he grabbed me and hit me."

CONCLUSION

After each side has had the opportunity to make opening statements, examine its own witnesses, cross-examine the opponent's witnesses and present closing statements, the judge should instruct the jury as to the appropriate law in the case.

The instructions which follow have been excerpted from pertinent sections of the Revised Edition of the *Standardized Jury Instructions* for the District of Columbia. It might be advisable to shorten and/or simplify them for classroom use:

ASSAULT AND BATTERY—DEFINED

"Any intentional and unlawful threat or attempt to commit injury upon the person of another, when coupled with an apparent present ability so to do, and a display of force such as to place the victim in apprehension of immediate bodily harm, is held to constitute an assault. So an assault may be committed without actually touching or striking or doing bodily harm to another.

"Battery is any intentional and unlawful use of force upon the physical person of another. Thus the least touching of the person of another may constitute a battery.

"Unlawful, as used in these instructions, means either contrary to law or without legal justification."

SELF-DEFENSE

"Defendant would be liable to the plaintiff only in the event that the striking of plaintiff by defendant was unlawful. Not every striking of another person is unlawful. The law recognizes the right of an individual to defend his own person and he need not wait to do so at his peril, *i. e.*, he need not delay his defense until unmistakably and in fact the supposed aggressor has made the first move. The test is reasonableness. If a person has a reasonable fear for his own safety by reason of the conduct of another, he may take reasonable steps to defend himself."

Once instructed, the jury should deliberate. They must decide from the evidence whether the prosecution has shown Randall to be guilty beyond a reasonable doubt. The jury may deliberate in a separate room as they would in an actual trial. The jury foreman writes the verdict on a slip of paper and hands it to the judge who reads it in "open court."

After the verdict has been received, the class may wish to discuss whether the procedures used for conducting the mock-trial were fair to both parties. Recommendations to improve procedures could be implemented in subsequent classroom mock trials.

In addition to fairness, discuss problems of proof encountered in the trial. Was the prosecution convincing enough to convince the jury of the defendant's guilt "beyond a reasonable doubt"? Did either of the attorneys question Phillip (the waiter) as to sound or lighting conditions in the nightclub at the time he observed the fight? Should someone have?

FAMILY LAW MOCK TRIAL

Anderson v. Anderson

BACKGROUND

Separation agreements are often incorporated into final decrees of divorce and are binding upon the parties. As mentioned in the text, although most provisions in the agreement are binding on the parties, provisions affecting minor children, for example, support payment levels, are susceptible to later court challenge and modification.

When a spouse files a motion with a court to alter the level of support for a child or children, the judge will look at all relevant factors including the incomes and needs of each spouse and the needs of the children. Generally courts use a "change in circumstances" test in resolving these problems. For example, if a woman returned to court to ask for an increase in support payments because of inflation she might have a difficult time prevailing if the former husband's income had not changed substantially, as he too would have been victimized by inflation. However, if a woman returned to court seeking an increase in support because of a serious illness which had befallen a child and the former husband had tripled his income since the divorce, she would be more likely to prevail. Most cases tend to fall between these two extremes.

FACTS

Mrs. Anderson was awarded a divorce from her husband in 1962. The divorce decree awarded custody of 12 year old daughter Candy to the mother and provided that Mr. Anderson pay her $80.00 per month for child support, $20.00 per month for alimony and $250 as her attorney's fees. Six years later, Mrs. Anderson returned to court asking that her divorce decree be modified by an increase in alimony and child support allowance.

Since the divorce, Mrs. Anderson has not remarried but has taken a job as a legal secretary earning $373.00 per month. This, along with her alimony and support payments, constitutes her sole source of income.

Mr. Anderson has remarried and lives with his new wife and her daughter by a previous marriage. His income is about $6,500 (it was

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about $4,000 at the time of the divorce) and his new wife's income is $4,800.

Candy is an honor student who has won several awards in the field of art. Mrs. Anderson has decided that the school of art at Washington University, in St. Louis, was the best in the area for her daughter's college plans. She brings this action because of the added expense involved in sending her there ($1,900 in tuition for the school year, $1,165 for room and board, and about $300 for books and art supplies).

Mr. Anderson's father died in 1967 leaving him an 80 acre tract of land on the east side of U. S. Highway 71 in Platte County, Missouri.

COURT

The judge will have to decide whether the original divorce decree should be modified, and if it is to be modified, whether alimony or child support or both should be increased (and by how much).

The court's final decision will be in the form of an order which, if not followed, could result in contempt of court charges against the non-complying party.

WITNESSES

For the Plaintiff

(1) Mrs. Anderson

(2) Candy Anderson, the daughter

For the Defendant

(1) Mr. Anderson

(2) Mrs. Anderson, the defendant's second wife

WITNESS STATEMENTS

Mrs. Anderson:

"When my former husband and I first split up six years ago we reached a satisfactory agreement on support at that time. He wasn't making much of a salary, things were cheaper and Candy was only

12. We had no idea that prices would increase the way they have. And we certainly didn't know of Candy's interest in the fine arts. Since that time she has won several county wide art awards and exhibited and sold some of her work. She's also been an honor roll student throughout high school.

"My husband had always lead Candy to believe that college was in her future, so we looked for the best art school in the area and settled on Washington University in St. Louis. Tuition, room and board, and expenses are not cheap but he can afford it since he inherited all that property along Highway 71.

"Now that he's got so much money, he should increase his alimony payments to me. He can certainly afford to pay me more than $20 a month."

Candy Anderson:

"Ever since my parents' divorce when I was going into junior high school, my father always talked about how proud he was that I was a good student in school. He also said that he hoped I would go to college someday. He never exactly said that he would pay for college, but he knows that Mom and I couldn't possibly afford to pay for it."

Mr. Anderson:

"I don't know how my former wife could possibly expect me to pay for Candy's college education. Between her salary working for these lawyers and what I now pay her in alimony and child support, her total income is higher than mine! How could she expect me to pay $3,000 more dollars each year for the next four years? I just haven't got that kind of money. Also, part of my present salary goes to support my current wife and her daughter whom I'm in the process of legally adopting. I don't think it's fair to take food off their table to send Candy to one of the most expensive art schools in the Midwest. If they were so interested in college, they should have talked to me about it before and maybe we could have worked something out together. But they just went off and made all these plans and now are demanding all this money.

"I know things have gotten more expensive since 1962 and I realize that Candy's mother has tried to provide for her needs as best she can. I'm willing to increase child support payments from $80 per month to $100 per month to help them keep up with the rising prices. But paying for college is a lot different than giving my daughter the food, clothing and shelter she needs."

Mrs. Anderson:

"The truth is that my husband, my daughter and I are just barely scraping by right now, even with my husband and I both working full-time. I know that he loves Candy and would like to help her if he could but it's just impossible for him. If you compare housing, clothing, automobiles and those kinds of things, Candy and her mother actually live better than the three of us do!"

CONCLUSION

This mock trial presents some very difficult but quite real problems: Does a father's duty to supply his minor child with necessaries extend to college education? If it does, can Mr. Anderson afford such an expense in this case? Should the court order him to sell the land he inherited to pay for Candy's college education? If college is not a necessary, what can Candy and her mother do?

The decision in this case should include whether or not alimony and/or child support should be increased (and by how much) and whether the father should pay his daughter's college expenses (in whole or in part).

To learn how the Kansas City Court of Appeals handled the case on which this problem is based, students may wish to read *Anderson* v. *Anderson*, 437 S.W.2d 704 (Mo.App.1969).

Plea Bargaining

A plea bargain is an agreement between the defense and prosecuting attorneys made with the consent of the judge and the defendant. In a plea bargain, the defendant agrees to plead guilty to a crime that is less serious than the one charged rather than go to trial. The judge then sentences the defendant immediately. A plea bargain allows a case to be completed quickly and the defendant usually receives a light sentence.

In the simulation which follows you will participate in the plea bargaining process in order to learn more about the ways plea bargains are negotiated. The purpose of the game is to learn about plea bargaining and to practice representing your own point of view. Read the directions, enact the simulation, and then discuss it using the questions provided at the end of the lesson. If possible, you may wish to invite a deputy district attorney and/or public defender to visit the class and discuss the plea bargaining process.

Teacher Instructions:

OBJECTIVE: **To identify and define procedures related to plea bargaining**

1. Have students read the introduction to plea bargaining. Provide sufficient time to insure understanding of this controversial legal process.
2. Follow the directions provided in the student reading.
3. After the game is completed, ask students to discuss their views on plea bargaining (orally or written) using the following question: "In your opinion, does plea bargaining help or hinder a defendant in securing his/her rights to due process?"

Additional Recommendations

1. **Classroom Resource Persons:** Deputy District Attorney and/or Public Defender, private defense attorney or judge might be invited to observe the activity and debrief it.
2. **Field Experiences:** Plea bargaining is not a public procedure. However, students might identify the results of a plea bargain in a preliminary hearing. Students might also interview justice system personnel involved in plea bargaining.

Simulation:

Plea Bargaining Game

1. The members of the class should divide into five small groups.
2. Number the groups 1-5.
3. Members of each group should decide among themselves who will represent the following points of view: defense attorney, prosecuting attorney, and judge. Two people may represent the same point of view, if necessary.
   You have arranged a meeting today to discuss a plea bargain on a case assigned to you. Because your schedule is crowded, you have only fifteen minutes for this meeting.
4. Each group should study the case assigned on the following pages:
   Group 1: The Case of *People vs. Rosemary J. Spelker*
   Group 2: The Case of *People vs. Adam J. Jackson*
   Group 3: The Case of *People vs. Warren Kellar*
   Group 4: The Case of *People vs. William H. Garcia*
   Group 5: The Case of *People vs. John David Gray*
5. After the members of your group have studied the case, discuss it. Make a decision about what plea bargain should be arranged. Remember: Each member of the group should represent only one point of view. The judge will act as moderator and spokesperson for the group. Be prepared to explain the reasons for your decision. If time remains, read the other cases and discuss them.
6. Judges should report the decision of their group and the reasons for it to the rest of the class.
7. All 5 groups should answer the three discussion questions on page 11.

Petty Theft

Group 1: The Case of *People vs. Rosemary J. Spelker*

Summary of Facts of the Case

Rosemary J. Spelker was arrested for petty theft. Security officers in the store noticed her take a blouse from the sportswear department and conceal it in her shopping bag. Ms. Spelker claims she did not intend to steal the blouse. She says she was preoccupied and inadvertently put it in her shopping bag. Store detectives believe that Ms. Spelker planned the theft.

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Other Circumstances

Ms. Spelker will begin a new job soon. She does not want her employer to learn of this incident. She has offered to compensate the department store. The department store, on the other hand, has had a great deal of trouble with shoplifters. The store manager recently hired security guards. One of the new guards caught Ms. Spelker. The store wants to press charges. The manager believes that if he makes an example of this case, shoplifters will be deterred in the future.

Plea Bargain

Consider the following pleas:

- Dismissing the charges
- Allowing Rosemary Spelker to compensate the store for the articles and/or putting Spelker on probation and/or letting Spelker perform alternative services such as lecturing to school children about the wrong involved in shoplifting.

What plea bargain is arranged? _____

_____

_____

Discussion Questions

1. What was your reaction to the plea bargaining session? Why?
2. In your opinion, what are the advantages and disadvantages of plea bargaining?
3. In your opinion, does plea bargaining help or hinder a defendant in securing his/her rights to due process? Write a paragraph explaining your answer.

Assault & Battery

Group 2: The Case of *People vs. Adam J. Jackson*

Summary of Facts of the Case

Adam J. Jackson lived in his neighborhood for many years. Recently new neighbors had moved in next door. The neighbors owned motorcycles which their children rode frequently. The children liked to ride early in the morning and late in the evening as well as during the day. The noise of the motorcycles disturbed Mr. Jackson. He asked the neighbors to ride their motorcycles in another area. The neighbors refused, saying, "It's a free country." After many requests, Jackson called on his neighbors and told them that the noise must stop or he would take legal action. An argument ensued. During the argument, Jackson threatened his neighbor. He then punched his neighbor with his fist. Later, Jackson was arrested for assault and battery.

Other Circumstances

Jackson is studying to be a teacher. He feels his chances of getting a job in the future would be harmed by a criminal record. He knows he lost his temper. He would therefore like to have the charges dismissed or perform a service for the city instead of receiving a jail sentence. The district attorney, on the other hand, has been elected to "clean up neighborhood violence." He wants to press the case. Jackson's attorney hopes to arrange a plea bargain in which Jackson might be charged with disturbing the peace.

Plea Bargain

Consider the following pleas:

- Dismissing the charges
- Reducing the charge to disturbing the peace
- And/or putting Jackson on probation
- And/or letting Jackson perform alternative services, such as planting flowers in the city parks

What Plea Bargain is Arranged? _____

_____

_____

Selling Illegal Drugs

Group 3: The Case of *People vs. Warren Kellar*

Summary of Facts of the Case

Warren Kellar has used illegal drugs for a long time. Recently, he had begun to sell them. One evening he met a "customer" at a hamburger stand and the two drove to a nearby parking lot. There, Kellar sold his customer some cocaine. As they drove back to the hamburger stand, the police stopped Kellar, searched the car, and discovered the illegal drug. Kellar was arrested for selling illegal drugs.

Other Circumstances

Kellar has no previous record for selling illegal drugs. However, he has been arrested for possession of marijuana several times. The district attorney is eager to remove "hard" drugs from the streets by prosecuting any drug dealers to the fullest extent of the law. However, the court schedule is overcrowded and it will be many months before Kellar can be brought to trial. The district attorney is therefore willing to arrange a plea bargain in order to complete the case quickly.

Plea Bargain

Consider the following pleas:

- Possession of narcotics for sale (Felony)
- Possession of narcotics (Felony)
- Driving while under the influence of an intoxicating substance (Misdemeanor)

What Plea Bargain is Arranged? _____

_____

_____

Assault With a Deadly Weapon

Group 4: The Case of *People vs. William H. Garcia*

Summary of Facts of the Case

Recently, William H. Garcia attended a large party to

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celebrate the wedding of his friends. At the party, many people drank the strong punch. About a dozen people, including William, became drunk. Somehow, a fight broke out, and William became involved. One of the men involved in the fight had a knife. One of the men in the fight was stabbed and had to be taken to the hospital. The wounded man later died from a reaction to the drugs administered by the hospital and the alcohol in his bloodstream and from his wounds. The men in the fight were arrested for assault with a deadly weapon.

Other Circumstances

William Garcia admits he was drunk at the time of the fight. Although he has never been arrested before, he is known to have a violent temper. Garcia claims that he did not use the knife himself and that he was provoked into the fight. Garcia knows the people who were involved in the fight and who carried the knife. The district attorney hopes to offer Garcia a plea bargain in exchange for information about the other people involved in the fight. Garcia is planning to be married soon. He does not want to begin married life with a criminal record. He feels that by going to trial he might be able to clear his name.

Plea Bargain

Consider the following pleas:

- Assault with a deadly weapon (Felony/6 months-1 year)
- Assault and battery (Misdemeanor/0-1 year in jail, up to $10,000 fine)
- Disturbing the Peace (Misdemeanor/0-6 months in jail, up to $500 fine)
- Probation
- Dismissing the charges

What plea bargain is arranged? _____

_____

_____

Felony—Murder

Group 5: The Case of *People vs. John David Gray*

Summary of the Facts of the Case

John and several friends went to the movies on Saturday afternoon. One of the young men had a gun. After the movie, the young men boarded a bus. During the bus ride, the young man who carried the gun became involved in an argument with one of the passengers. The argument concerned money. John and the others joined in the argument. A scuffle developed between the passenger and the young men. When the bus came to a stop, most of the passengers got off. However, John's friend drew the gun and shot the passenger before leaving the scene. The passenger died. John escaped. John helped hide the gun. Later John and his friends were arrested for felony—murder, a crime which has a penalty of 5 years to life in prison.

Other Circumstances

John has been in trouble many times before. This is the most serious crime with which he has ever been charged. John is willing to accept a plea bargain. The district attorney feels John is dangerous and should be prosecuted to the fullest extent possible. However, he would like to dispose of the case quickly and is willing to make a plea bargain.

Plea Bargain

Consider the following pleas:

- Armed Robbery (Felony/15 years to life in prison if someone is injured; up to 5 years in prison if no one is injured)
- Robbery (Felony/1-5 years in prison)
- Involuntary Manslaughter (0-15 years in prison)
- Attempted Kidnapping (1-25 years in prison)

What plea bargain is arranged? _____

_____

_____

Appellate Court (Criminal Appeal)

Role-Play

What is an appellate court? An appellate court is somewhat different from a criminal trial court.

For example, suppose you are accused of a crime. You are tried, found guilty, and sentenced to prison. Suppose, further, the facts of your case were accurately presented in court. However, you still feel that your case was not handled fairly because the judge refused to allow certain evidence favorable to you to be presented. Although your lawyer did object, the judge overruled the objection and your trial continued.

Now you want to **appeal** your case to a higher court. Your attorney has prepared the necessary papers, called **briefs,** for the appeals court judges to read. The briefs contain the facts of your case, laws related to it, and your lawyer's arguments contending that you received an unfair trial because you were not allowed to present certain evidence. Your lawyer says your rights to a fair trial have been violated and that you should receive a new trial. This question—whether your rights to a fair trial have been violated—is called **question of law.**

The appeals court judges, or justices, are concerned merely with whether the **law** was unfair to you. They are not concerned with the facts of your case or with whether you are guilty or not guilty. They are concerned with the facts surrounding how your case was handled in the courtroom—that is, with the procedures that were used.

Teacher Instructions

OBJECTIVE: **To identify cases which involve questions of law and understand the Appellate Court process.**

1. Ask students to read the introduction to this activity, *What is an Appellate Court?*
2. Divide the members of the class into groups of five justices. Each group should read the summaries of Case 1 and Case 2 and make a decision on each. It is not necessary that all the justices agree. However, each group should be prepared to explain the reasons for its decision(s).
3. After each group of justices has discussed and made a decision on each case, the class should assemble as a large group to discuss the following questions.

Discussion Questions:

1. What decision was made by each group on each case? Why?
2. Were some groups split on their decisions? If so, why?
3. How would you describe the differences and similarities between an appeals case and criminal court case?
4. In what ways do appeals cases help form the law?
5. What are some advantages of the appeals process? What might happen if we did not have an appeals process?
6. Why would it be unconstitutional for an appeals court to examine the evidence of a case to decide on the guilt or innocence of a defendant?

Additional Recommendations

1. **Classroom Resource Persons:** Lawyer with appeals court experience; Appeals Court Judge.
2. **Field Experiences:** Visit an Appellate Court. What differences do students note between appellate court and a trial court?

Appellate Court

Role Play: Deciding Questions of Law

Now that you understand the kinds of questions which concern the appeals court, examine the two appeals cases below. To do so, divide the members of the class into groups of five justices. Each group should read the summaries of Case 1 and Case 2 and make a decision on each. It is not necessary that all the justices agree. However, each group should be prepared to explain the reasons for its decision or decisions.

Case 1: Watson v. McCarthy

Background

The notorious Tate-LaBianca murders were committed by the "Manson Family" in Los Angeles in August 1969. The following November, Charles Watson was arrested in Texas for his part in the murders.

Legally, when authorities from one state wish to arrest someone in another state, they must obtain an **extradition order,** a legal document which allows the arrested person to be taken away.

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For 285 days after his arrest, Charles Watson fought the extradition order by appealing to the Texas courts. Finally, however, he was extradited to California where he was tried for eight counts of first degree murder, found guilty, and sentenced to death. Later, when the death penalty was declared unconstitutional, his sentence was changed to life in prison for each of the eight counts of murder. The sentences were to be served at the same time. Watson was then delivered to Warden McCarthy of the California Men's Colony, a prison near San Luis Obispo, California.

The Law

A California law states that:

1. A person who is convicted of a felony may receive credit for the time he/she has spent in jail from the time of arrest to sentencing.
2. Credit for this time is given only when the defendant was in custody for the crime or crimes of which he/she is ultimately convicted.

Role Play: Deciding Questions of Law

The Question of Law

Watson requested 285 days credit on his life sentence for the time he spent in a Texas jail while fighting extradition. The superior court first granted Watson credit for this time. However, Warden McCarthy appealed this decision saying Watson was a "fugitive from justice" during the time he fought extradition and was not actually in custody. Therefore, McCarthy contended, Watson was not entitled to credit for time served.

Is Watson legally entitled to credit for time served for the time he spent in a Texas jail while fighting extradition?

Arguments

1. Watson should not receive credit for time served while in custody and fighting extradition.
   a. Watson was a fugitive from justice and was trying to evade arrest. He continued to evade arrest for 285 days.
   b. Although Watson was in custody in a jail, he was fighting extradition and was still a fugitive. Credit for time in jail should not be given to such cases.
   c. Watson knew that he was wanted and was merely trying to avoid prosecution. The law was not intended to protect such actions. To allow Watson credit in this case would encourage others to flee from justice.
   d. Extradition is merely for the purpose of inquiry. It does not prove guilt or innocence but only seeks to determine whether the accused was in the location of the crime at the time the crime was committed. Watson's stay in Texas was by his own choice, not because he was in custody.
   e. Watson should not receive credit for Texas jail time because his case does not fall within the provisions of the California law.
2. Watson should receive credit for time served while in custody and fighting extradition.
   a. The law states that a person who spends time in any jail for reasons attributable to charges arising from a crime for which the defendant has been accused and convicted may receive credit. Watson's case fits these requirements and it does not matter that he was in a Texas prison.
   b. Watson's imprisonment was *directly attributable* to charges arising from the same criminal acts of which he was convicted. The law covers persons resisting extradition.
   c. The refusal to give Watson credit may well be a desire to "punish" him as a member of the Manson family. In this case, we are concerned only with the meaning of the law, not with the personalities involved in the case itself.
   d. Watson is entitled under the Constitution to resist extradition. The fact that he did so should not and does not make him ineligible to receive credit for time served. What is your decision?

Case 2: In re Roger G.

Background

On March 22, 1973, Grace Capistrano was shot to death in the parking lot of Centinela Community Hospital. Roger, 16, was arrested for the crime and interrogated by the police on September 5. During the interrogation Roger confessed to participating in the crime but not to firing the fatal bullet. The case was adjudicated in juvenile court and Roger was found delinquent and made a ward of the court based on his confession and other evidence. Later, the decision in Roger's case was appealed on the grounds that his confession was involuntary and that the police had made threats and promises while questioning Roger which were not within the permissible bounds of police conduct.

The Law

A confession is considered involuntary and inadmissible if it is secured by an express or implied promise of benefit beyond that naturally flowing from a truthful statement or by an express or implied threat that the failure to make a statement will result in consequences adverse to the suspect.

The Question of Law

Was Roger's confession voluntary (and therefore admissible) or involuntary (and therefore inadmissible)?

Arguments

1. Roger's confession was voluntary and therefore admissible. The transcript of the tape of the interrogation is shown below. In the transcript, it is clear that Roger was informed of and knew his rights:

Suspect of D.R. No. 73-3654.
"Roger. This is Detective Varey, Inglewood Police Department; Detective Long, Inglewood Police department. What we are going to do now is advise you of your rights, and after each right, I would like you to answer 'yes' or 'no,' you do understand it or you do not understand it. Okay?
"A Yeah.
"Q Number 1. You have the right to remain silent. Do you understand that?
"A Yup.
"Q Yes?
"A You [sic]
"Q Number 2. Anything you say can and will be used against you in a court of law. Do you understand that?
"A Yeah.
"Q Number 3. You have a right to talk to the lawyer before we talk to you and have him present while we talk to you. Do you understand that?
"A Yup.
"Q Number 4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning free of charge. Do you understand that?
"A You [sic]
"Q Do you understand each of the rights explained to you?
"A Yup.
"Q Do you want to talk about this case or not?
"A Yeah. I don't even know what I'm arrested for.
"Q We'll tell you. Do you want a lawyer or not?
"A Naw.
"Q Do you?
"A Huh.
"Q Okay. That means no?
"A Uhhuh.
"Q Now, can you say yes or no?
"A No.
"Q Thank you. Move a little closer. Okay. Roger, you have been arrested for suspicion of homicide.
"A That's murder, huh." (Nov. 1975)

2. Roger's confession was involuntary and therefore inadmissible. The excerpts from the tape of the interrogation shown below make clear that police used threats and promises to secure a confession:

The first 15 pages of the transcript disclose Roger's efforts to avoid confessing to the crime and claim an inability to remember. The interrogation officer then asked: "How old are you? Sixteen? Seventeen? Seventeen?" and then added: "You know, you could be in jail until you are about thirty-five. That's a long time." Another officer interjected: "And then some, 'cause he might be certified to adult court. . . . And you can be certified adult and get a life sentence on it too." The original officer said: "So let's have it out man. Let's get it straight now. You're still a juvenile yet. You get you certified an adult, you're not gonna be treated as a juvenile: you're gonna be treated as an adult. They sure hold them tight boy. . . . "

When Roger said, "I've gotta see 'em [the other two accused juveniles] before I say anything," an interrogating officer replied: "You ain't gonna see nobody except the court if you want to be that way. I'd see you go to adult court uh, you ain't gonna ride Richard's raft if ah." Roger said, "Oh, yeah?" The officer stated: "You know, if Richard squeezed the trigger and you didn't, man, I ain't gonna ride his rap."

The interrogating officer continued: "We ain't askin' you to do the squealing, all we want is your version of what took place. Because, uh, when you go to jail, do time, you're gonna be your own time. You're not gonna be Richard's time, you're not gonna do Jerry's time, you're gonna be your own time. It's your life, man. It's shades. It could be seven or eight or ten or life, you know, sentence out of your life; not theirs. You're the guy—number one—you'd better start thinking about and talkin' about. We don't want to hear about what they did; only what you did."

Another officer entered the questioning. He said: "Say you and I went to a liquor store, and I have a gun, and you don't. . . . And we go in there and all intents and purposes of robbing the liquor store. Okay? . . . I'm just giving you a for instance. . . . Okay? You and I go in a liquor store and you're gonna pull the job. So, we get in there and get the money and the liquor store guy reaches under the counter, so I blast him. . . . And, tell you and hey, man let's make it. Okay. I killed the guy." Roger answered: "You gonna get the shades, the shades?" The officer replied: "That's right. Exactly what I was going to tell you." Roger said: "Well, I'll get jes' as much time as he do won't I?"

Another officer responded: "That's exactly right." The previous officer added: "But it's gonna help you out for a chance of probation or getting parole if you are honest about the thing." Roger said, "Oh, yeah?" The officer continued: "Tell your side of it, because if you go in there hard-nosed and just lie, and try to cover up, do you think we'd give you a chance at probation or parole? No way."

Roger asked: "What is parole?" The officer responded, "Well, that's getting out of jail—you know, you might be six months and get out the rest on parole. And do the rest of the time at home. You understand, well, parole's like probation. A parole, you say, well, you see, ah. I get sentenced too, for robbery. They give me a five-to-life sentence. Okay? . . . I go to jail and I serve a year or to 18 months. Okay. For the next five years, they're gonna put me on parole and let me out, and I'm gonna do my time outside. I'm still really technically in jail, but I'm not out a . . . doing everything I do normally, but I've gotta behave myself, 'cause if I get involved in any more trouble, I go right back and serve that five years out. But if I go to jail hard-nosed 'n' what-have-you, do you think the Parole Board is gonna listen to me? No, man. They're make me do probably the whole damn five years, or more. You know."

Roger answered: "You think I can get parole. I mean, a, whatcha call it?" The officer responded: "Not promising it. There's a possibility. But if you go in there with, if, if I was sittin' here and shuckin' with you, and he and I pulled a caper, and he's tellin' me the straight poop, then you're surely gonna listen to him and try to help him more than you or me.".

What is your decision?

Teacher Instructions

OBJECTIVE: **To identify and evaluate the criteria and procedures for sending juveniles to juvenile hall.**

NOTE: *This lesson is suitable for peer teaching.*

1. Ask students to read the introductory section of the lesson. Explain that after they have read this section they will have the opportunity to enact a simulation of a Juvenile Hall In-Take Interview.
2. Make sure students understand the alternatives available to the probation officer and the law which applies to juveniles in such cases.
3. The Juvenile Hall In-Take Simulation may be done as an individual, small group or large group activity. If a small group or large group setting is used, invite students to role play the cases described in the student text.
4. After students have made their decisions on each case, discuss the simulation using the questions provided at the end of the student text. Teachers may also wish to invite a juvenile probation officer to visit the class to discuss and debrief the simulation. Encourage students to justify their decisions. Re-emphasize, if necessary, that a final disposition in each case would be made by the juvenile court.

Additional Recommendations

1. **Classroom Resource Persons:** Juvenile probation officer, police officer, and/or an attorney.
2. **Field Experiences:** Youth Correctional Facility.

Who Should Go to Juvenile Hall?

Simulation:

When police arrest a juvenile, they have several alternatives:

Alternative 1:

The police may counsel the youth and release him/her to parents or a guardian.

Alternative 2:

In more serious cases, the police may release the juvenile after telling the parents/guardian that in a few days they will have to go to a probation officer for a "juvenile in-take interview." At this interview, a probation officer talks with the juvenile and his/her parents/guardian about the circumstances that led to the arrest. The probation officer then decides whether to file a petition with the Juvenile Court for a hearing (adjudication).

When a petition is filed, the juvenile and his/her parents/guardian must appear before a Juvenile Court judge. At the first Juvenile Court hearing the judge decides whether to make the juvenile a ward of the court. If the judge does make the young person a ward, another Disposition Hearing is held to decide what should be done about the case.

Alternative 3:

The police may arrest a youngster and take him/her directly to Juvenile Hall when they believe a juvenile is dangerous or needs protection. At Juvenile Hall a probation officer interviews the youngster and decides whether to hold him/her.

In making this decision, the probation officer must follow certain legal guidelines. For example,

> . . . The probation officer shall immediately investigate the circumstances of the minor and the facts surrounding his being taken into custody and shall immediately release such minor to the custody of his parent, guardian or responsible relative unless . . . continued detention of the minor is a matter of *immediate and urgent necessity for the protection of the minor or the person or property of another.* . . .

If a probation officer decides to lock up a juvenile, the juvenile must apear before a Juvenile Court judge within 72 hours after first being taken into custody by the police. This appearance in Juvenile Court is called a Detention Hearing. It is for the purpose of deciding if the juvenile should continue to be held in Juvenile Hall while awaiting his/her Adjudication Hearing in Juvenile Court.

Juvenile Hall In-Take: A Simulation

During this activity, members of the class will act as probation officers assigned to Juvenile Hall In-Take. They must decide whether to detain juveniles who have been arrested by the police or release them to their parents, guardians, or other responsible relatives. In each case, the juvenile involved must appear later in Juvenile Court. Thus, you must decide *only* whether the juvenile should remain in Juvenile Hall while waiting to go to Juvenile Court.

In making your decision, keep in mind the following facts:

1. Your decision must conform to the law (see the above).
2. The probation department has been heavily criticized recently by the police and others for releasing too many dangerous suspects. Many people are upset that juveniles arrested by the police can be found on the streets a few hours later bragging to their friends about the crimes they have committed.
3. Juvenile Hall is overcrowded and is generally not a good place for young people to be even for a few hours.

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4. Your own views on the right thing to do.
Read the following cases. In each case, decide whether to hold or release the juvenile before his/her court appearance. Write down each decision and the reasons for it.

Case 1: *John Carver, 14*

John has been arrested because he allegedly sexually molested a 7-year-old neighborhood girl. John has been in trouble before. He has a Juvenile Court record for "glue-sniffing" and being a "runaway." The 7-year-old girl was not physically injured, but she was very frightened.

Case 2: *Barry James, 17*

Barry has been arrested in a police-conducted drug bust in several high schools. Barry has been accused of selling marijuana and pills to other students at his school in an upper middle-class neighborhood. This is the first time Barry has ever been arrested. Barry's parents have already hired an attorney who has contacted you and asked you to release Barry to his parents.

Case 3: *Carl Russo, 17*

Carl has been arrested in the same drug bust sweep described in Case 2. Carl has been accused of selling marijuana and pills to other students at his school in a poor neighborhood. Carl has a long juvenile record: marijuana, possession of a firearm. Carl also is a known gang member. "Snake" is his street name. Carl's parents are not living together. He is presently living with an aunt.

Case 4: *Jane Flowers, 15*

Jane has been arrested for allegedly running away from her foster home. Jane became a ward of the court after her father died of a drug overdose and her mother killed herself. Jane has been in several foster homes, but has been a persistent runaway. The last time Jane ran away, she was arrested for soliciting for prostitution. Jane says that she ran away this time after her foster father beat her. Black and blue marks are evident on her face and back.

Case 5: *Clay Barton, 16*

Clay has been arrested for drunk driving and hit-and-run of an 85-year-old woman while driving under the influence of alcohol. The woman is in critical condition at County Hospital. Clay fled the scene of the accident and was arrested four hours later at his home. Clay has a record of truancy at school but no Juvenile Court record. He is presently living with his mother, who is divorced.

Case 6: *Gerald Medina, 17*

Gerald has been arrested for murder. Gerald is accused of participating in the rape and knife-murder of a 16-year-old girl. He has a Juvenile Court record of assault with a deadly weapon (switchblade), driving while under the influence of narcotics (mescaline), and robbery. Gerald's older brother has spoken to you and has indicated that he will take responsibility for Gerald pending his Juvenile Court trial. The brother is married, has a steady job, and appears to be a responsible person.

Discussion Questions

1. Tally the decisions made by the members of the class in Case 1. What were the reasons for allowing the juvenile to go home? For keeping the juvenile in juvenile hall? Discuss the other cases in this lesson as you did Case 1.
2. Based on your experience with these cases and your knowledge of juvenile hall facilities, do you think the law which applies to the detention of juveniles is fair? Why or why not?

HINTS ON PREPARING FOR A MOCK TRIAL TOURNAMENT

The following tips have been developed from previous experiences in training a mock trial team.

- All students should read the entire set of materials, and discuss the information/procedures/and rules used in the mock trial contest.

- The facts of the case, witnesses' testimony, and the points for each side in the case then should be examined and discussed. Key information should be listed on the chalkboard as discussion proceeds so that it can be referred to at some later time.

- Even though a school team only has to represent one side in the case during any single round of the competition, all roles in the case should be assigned and practiced. This will help in practicing the case as well as in preparing for future rounds, should a team advance and be required to change sides in the next round.

- Credibility of witnesses is very important to a team's presentation of its case. As a result, students acting as witnesses need to really "get into" their roles and attempt to think like the persons they are playing. Students who are witnesses should read over their statements (affidavits) many times and have other members of the team or their class ask them questions about the facts until they know them "cold."

- Student team members have primary responsibility for deciding what possible questions should be asked of each witness on direct and cross-examination. This work can be done in class, through group work, or as an outside class assignment. Questions for each witness should be written down and/or recorded on the chalkboard.

  (Based on the experiences obtained through several years of mock trial competitions, we have found that the best teams generally had their students prepare their own questions, with the teacher-coach and attorney-adviser giving the team continual feedback and assistance on the assignment as it was completed.)

- After the questions are prepared for witnesses, a team should hold several practice sessions where its attorneys question individual witnesses, and the rest of the class or team evaluates which questions are good, and which might be dropped or added. These sessions will also help prepare the witnesses for the tournament.

(Based on the experience of these practice sessions, attorneys should revise their questions, and witnesses should restudy the parts of their witness statements where they are weak.)

- Opening and closing statements should also be written out by team members. Legal and/or non-legal language should be avoided where its meaning is not completely understood by attorneys and witnesses.

- Closing statements should not be totally composed before trial, as they are supposed to highlight the important developments for the prosecution (plaintiff) and the defense which have occurred during the trial. The more relaxed and informal such statements are, the more effective they are likely to be. Students should be prepared for interruptions by judges who like to question the attorneys, especially during closing argument.

- As a team gets closer to the first round of the contest, the tournament requires that it conduct at least one complete trial as a kind of "dress rehearsal." All formalities should be followed and notes taken by the teacher-coach and students concerning how the team's presentation might be improved. A team's attorney-adviser should be invited to attend this session and comment on the enactment.

- The ability of a team to adapt to different situations is often a key part in a mock trial enactment since each judge--or lawyer acting as a judge--has his or her own way of doing things. Since the proceedings or conduct of the trial often depend in no small part on the judge who presides, student attorneys and other team members should be prepared to adapt to judicial rulings and requests, even if they appear contrary to outlined contest procedures and rules.

Some of the things most difficult for team members to learn to do are:

(a) To decide which are the most important points to prove their side of the case and to make sure such proof takes place;

(b) To tell clearly what they intend to prove in an opening statement and to argue effectively in their closing statement that the facts and evidence presented have proven their case;

(c) To follow the formality of court, e.g., standing up when the judge enters; or when addressing the judge, to call the judge "your honor", etc.;

(d) To phrase questions on direct examination that are not leading (carefully review the rules of evidence and watch for this type of questioning in practice sessions.);

(e) Not to ask so many questions on cross-examination that well-made points are lost. When a witness has been contradicted or otherwise discredited, student attorneys tend to ask additional questions which often lessen the impact of points previously made. (Stop...recognize what questions are likely to require answers that will make good points for your side. Rely on the use of these questions. Avoid pointless questions!!!);

(f) To think quickly on their feet when a witness gives an unexpected answer, an attorney asks unexpected questions, or a judge throws questions at the attorney or witness. (Practice sessions will help prepare for this.)

GLOSSARY OF LEGAL TERMS

Acquittal - A verdict of not guilty of a crime as charged; a discharge after a trial.

Adjudication - Giving or pronouncing a judgement or decree; also the judgement given.

Administrator - Person who has been granted authority by a court to administer the estate of a deceased person.

Adversary system - The system of trial practice in the U.S. and some other countries in which each of the opposing, or adversary parties, has full opportunity to present and establish their opposing contentions before the court.

Advisement - The act of deliberating or consulting by a court, after the arguments have been heard, before delivering an opinion.

Affidavit - A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the person making it, taken before an officer having authority to administer such an oath.

Allegation - The assertion, declaration, or statement of a party to an action, made in a pleading, setting out what he expects to prove.

Alleged - Stated; claimed; asserted; charged.

Amicus curiae - A friend of the court; one who interposes and volunteers information upon some matter of law.

Answer - A pleading by which defendant endeavors to resist the plaintiff's allegation of facts.

Appeal - To take to a higher court (verb); A new trial in a district court (noun).

Appearance - The formal proceeding by which a defendant submits himself to the jurisdiction of the court.

Appellant - The party appealing a decision or judgment to a higher court.

Appellate court - A court having jurisdiction of appeal and review; not a 'trial court'.

Appellee - The party against whom an appeal is taken.

Arraignment - In criminal practice, to bring a prisoner before the court to answer to a criminal charge.

Arrest - To take a person into custody in a manner authorized by law.

Assignment - Transfer of property, including transfer of rights of ownership in the property.

At issue - Whenever the parties to a suit come to a point in the pleadings which is affirmed on one side and denied on the other, they are said to be 'at issue'.

Attachment - A remedy by which plaintiff is enabled to acquire a lien upon property or effects of defendant for satisfaction of judgment which plaintiff may obtain in the future.

Attorney of record - Attorney whose name appears in the permanent records or files of a case.

Bail - To obtain release of a person under arrest on condition that he or she will appear at a certain time and place (verb); Conditions of release, including but not requiring the posting of bond (noun).

Bail bond - An obligation signed by the accused, with sureties, to secure his presence in court.

Bailiff - A court attendant whose duties are to keep order in the courtroom and to have custody of the jury.

Bench warrant - Process issued by the court itself, or 'from the bench' for the attachment or arrest of a person.

Bind over - To hold on bail for trial.

Bond - An instrument with a sum of money fixed as a penalty and with a clause binding the person to pay the penalty, conditioned that payment of the penalty may be avoided by the performance of certain acts, i.e., appearing for a hearing.

Breach - The breaking or violating of a law, right or duty; either by commission or omission.

Brief - A written or printed document prepared by counsel to file in court, usually setting forth both facts and law in support of his or her case.

Burden of proof - In the law of evidence, the necessity or duty of affirmatively proving a fact or facts in dispute.

Burglary - The unlawful breaking and entering of a dwelling (or other structure) belonging to another with the intent to commit a felony therein; also includes attempted forcible entry.

Cause - A suit, litigation or action, civil or criminal.

Certiorari - An original writ commanding judges or officers of inferior courts to certify or to return records of proceedings in a cause for judicial review.

Chambers - Private office or room of a judge.

Change of venue - The removal of a suit begun in one county or district, to another, for trial, or from one court to another in the same county or district.

Children's court - A division of the district court handling juvenile cases.

Circuit courts - Originally, courts whose jurisdiction extended over several counties or districts, and whose sessions were held in such counties or districts alternately; today, a circuit court may hold all its sessions in one county.

Circumstantial evidence - All evidence of indirect nature; the process of decision by which court or jury may reason from circumstances known or proved to establish by inference the principal fact.

Citation - A notice to appear and answer a stated charge.

Civil law - One of two broad fields of law, involving legal disputes between private individuals.

Commit - To send a person to prison, to an asylum, workhouse or reformatory, by lawful authority.

Common law - Law which derives its authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of courts. The English legal system.

Community property - (see property, community).

Commutation - The change of a punishment from a greater degree to a lesser degree, as from death to life imprisonment.

Competency - In the law of evidence, the presence of those characteristics which render a witness legally fit and qualified to give testimony.

Complainant - Synonymous with 'plaintiff'.

Complaint - In criminal cases, a sworn written statement of probable cause charging a violation of an offense; in civil cases, a written statement of the cause of action and claim for relief being sought by one party from another.

Concurrent sentence - Sentences for more than one crime in which the time of each is to be served concurrently, rather than successively.

Condemnation - The legal process by which real estate of a private owner is taken for public use without his consent, but upon the award and payment of just compensation.

Conditions of release - Conditions upon which an arrested person is released pending trial.

Contempt of court - Any act calculated to embarrass, hinder, or obstruct a court in the administration of justice, or calculated to lessen its authority or dignity. Contempts are of two kinds: direct and indirect. Direct contempts are those committed in the immediate presence of the court; indirect is the term chiefly used with reference to the failure or refusal to obey a lawful order.

Contraband - Articles, the possession of which is prohibited by law.

Conviction - The result of a criminal trial which ends in a judgment or sentence that the defendant is guilty as charged.

Corpus delecti - The body (material substance) upon which a crime has been committed, e.g., the corpse of a murdered man, the charred remains of a burned house.

Corroborating evidence - Evidence supplementary to that already given and tending to strengthen or confirm it.

Court reporter - A person who transcribes by shorthand or stenographically takes down testimony during court proceedings.

Costs - An allowance for expenses in prosecuting or defending a suit. Ordinarly does not include attorney's fees.

Counterclaim - A claim presented by a defendant in opposition to the claim of a plaintiff.

Courts of record - Those whose proceedings are permanently recorded. Courts not of record are those of lesser authority whose proceedings are not permanently recorded, e.g., magistrate court.

Criminal law - One of two broad fields of law, involving legal action taken by the state against a person accused of committing a crime or offense against society.

Cross-examination - The questioning of a witness in a trial, or in the taking of a deposition, by the party opposed to the one who produced the witness.

Damages - Monetary compensation which may be recovered in the courts by a person who has suffered loss, detriment or injury to his or her person, property or rights, through the unlawful act or omission or negligence of another.

De novo - Anew, afresh. A 'trial de novo' is the retrial of a case.

Declaratory judgment - One which declares the rights of the parties or expresses the opinion of the court on a question of law, without ordering anything to be done.

Decree - A decision or order of the court. A final decree is one which fully and finally disposes of the litigation; an interlocutory decree is a provisional or preliminary decree which is not final.

Default - Omission of that which ought to be done; omission or failure to perform a legal duty; neglect or failure of any party to take a step required of him or her in progress of a cause.

Defendant - The person defending or denying; the party against whom relief or recovery is sought in a civil action; the party put on his or her defense or summoned to answer a charge or complaint.

Deferred sentence - Postponed sentence; imposition of sentence is suspended, postponed, or stayed, for a period and on conditions set by the judge. If a violation of probation occurs, the judge may impose any sentence which could have been imposed at the time sentence was deferred.

Delinquency - The commission of an act by a juvenile which, but for the age of the perpetrator , would be a criminal offense punishable as such. Also a generic term used to describe a wide variety of youth offenses or misconduct defined according to state or local statutes and ordinances.

Deposition - The testimony of a witness not taken in open court, but in pursuance of authority given by statute or rule of court to take testimony elsewhere.

Direct evidence - Proof of facts by witnesses who saw acts done or heard words spoken as distinguished from circumstantial evidence, which is called indirect.

Direct examination - The first interrogation of a witness by the party on whose behalf he is called.

Directed verdict - An instruction by the judge to the jury to return a specific verdict.

Discovery - A proceeding whereby one party to an action may be informed as to facts known by other parties or witnesses.

Dismissal - An order for a termination of a case without a trial, freeing the defendant without a verdict.

Dissent - A term commonly used to denote the disagreement of one or more judges of a court with the decision of the majority.

District court - A court of general jurisdiction which decides both civil and criminal cases and functions as an appellate court for appeals from inferior courts and selected state agencies.

Docket - A book containing an entry in brief of all the important acts done in court in the conduct of the case from beginning to end.

Domicile - That place where a person has his true and permanent home. A person may have several residences, but only one domicile.

Double jeopardy - Common law and constitutional prohibition against more than one prosecution for the same crime, transaction or omission.

Due process - Law in its regular course of administration through the courts of justice. The guarantee of due process requires that every person have the protection of a fair trial.

Embezzlement - The fraudulent appropriation by a person to his own use or benefit of property or money entrusted to him by another.

Eminent domain - The power to take private property for public use by condemnation.

Empanel - To finalize the list of the jurors who have been selected for the trial of a particular case.

En banc - In the bench, a term used when the entire court participates in deciding a case.

Entrapment - The act of officers or agents of a government in inducing a person to commit a crime not contemplated by him, for the purpose of instituting a prosecution against him.

Ex parte - By or for one party; done for, in behalf of, or on the application of, one party only; as in ex parte motion or ex parte hearing.

Ex post facto - After the fact; an act or fact occurring after some previous act or fact, and relating thereto.

Executor - A person appointed by one who makes a will to carry out the directions and requests in the will and to dispose of the property according to the provisions of the will.

Exhibit - A paper, document or other article produced and exhibited to a court during a trial or hearing.

Expert evidence - Testimony given in relation to some scientific, technical, or professional matter by experts, i.e., persons qualified to speak authoritatively by reason of their special training, skill, or familiarity with the subject.

Extenuating circumstances - Circumstances which render a crime less aggravated, heinous, or reprehensible than it would be otherwise.

Extradition - The surrender by one state to another of an individual accused or convicted of an offense outside its own territory, and within the territorial jurisdiction of the other.

False arrest - Any unlawful physical restraint of another's liberty, whether in prison or elsewhere.

False pretenses - Designed misrepresentation of existing fact or condition whereby a person obtains another's money or goods.

Felony - A crime of a graver nature than a misdemeanor. Generally, an offense punishable by death or imprisonment in a penitentiary.

Forgery - The false making or material altering, with intent to defraud, of any writing which, if genuine, might be the foundation of a legal liability.

Fraud - An intentional perversion of truth; deceitful practice or device resorted to with intent to deprive another of property or other right, or in some manner do him injury.

Garnishment - A proceeding whereby property, money or credits of a debtor, in possession of another (the garnishee) are applied to the debts of the debtor.

Guardian - Person lawfully invested with the power and charged with the duty of taking care of the person and managing the property and rights of another person who, for some reason, is considered incapable of administering his or her own affairs.

Guardian ad litem - A person appointed by a court to look after the interests of a minor whose property is involved in litigation.

Habeas corpus - The name given to a variety of writs to bring a party before a court or judge in order to release the person from unlawful imprisonment.

Hearing - A proceeding, generally public, at which an issue of fact or law is discussed and either party has the right to be heard.

Hearsay - Evidence not proceeding from the personal knowledge of the witness.

Hostile witness - A witness who is subject to cross-examination by the party who called him to testify, because of his evident antagonism toward that party as exhibited in his direct examination.

Impeachment of witness - An attack on the credibility of a witness by the testimony of other witnesses.

Implied contract - A contract in which the promise made by the obligor is not express, but inferred by his conduct or implied in law.

Inadmissible - That which, under the established rules of evidence, cannot be admitted or received.

In camera - In chambers; in private.

Incapacitated person - An incapacitated person is any person who is impaired by reason of mental illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause, except minority, to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or management of his affairs.

Indeterminate sentence - An indefinite sentence of 'not less than' and 'not more than' so many years, the exact term to be served being afterwards determined by parole authorities within the minimum and maximum limits set by the court or by statute.

Indictment - An accusation in writing found and presented by a grand jury charging the person named in the indictment with the violation of the law. Also called a 'true bill'.

Indigency - Financial inability to hire a lawyer.

Inferior court - Any court subordinate to the chief appellate tribunal in a particular judicial system.

Information - An accusation against a person for a criminal offense, without an indictment; presented by the prosecution instead of a grand jury.

Injunction - A mandatory or prohibitive writ issued by a court.

Instruction - A direction given by the judge to the jury concerning the law of the case.

Interlocutory - Provisional; temporary; not final. Refers to orders and decrees of a court.

Interrogatories - Written questions propounded by one party and served on adversary, who must provide written answers thereto under oath.

Intervention - A proceeding in a suit or action by which a third person is permitted by the court to make himself a party.

Intestate - One who dies without leaving a will.

Irrelevant - Evidence not relating or applicable to the matter in issue; not supporting the issue.

Judgment - The official and authentic decision of a court of justice upon the respective rights and claims of the parties to an action or suit therein litigated and submitted to its determination.

Jurisdiction - The power of the court to hear and decide.

Jurisprudence - The philosophy of law, or the science which treats of the principles of positive law and legal relations.

Jury - Body of persons temporarily selected from the citizens of a particular district and invested with the power to try a question of fact.

Jury list - A list containing the names of jurors empaneled to try a cause or containing the names of all the jurors summoned to attend court. (In New Mexico, chosen from voter registration lists.)

Justice of peace court - A judicial body of inferior rank having (usually) civil jurisdiction limited to that prescribed by statute in civil cases and in criminal proceedings, prosecutions and commitments of offenders. (No longer used in New Mexico, having been supplanted by magistrate court.)

Juvenile - A person who has not reached the age of majority, usually 18 years of age.

Larceny - The felonious stealing, theft, leading or riding away of personal property from the possession of another.

Leading question - One which instructs a witness how to answer or puts into his mouth words to be echoed back; one which suggests to the witness the answer desired. Prohibited on direct examination.

Levy - A seizure; the obtaining of money by legal process through seizure and sale of property. The raising of the money for which an execution has been issued.

Libel - A method of defamation expressed by print, writing, pictures, or signs. In its most general sense any publication that is injurious to the reputation of another.

Limitation - A certain time allowed by statute in which litigation must be brought.

Magistrate court - The people's court: a court of limited jurisdiction authorized to decide certain types of civil cases, criminal misdemeanors and first appearances and preliminary hearings in felony cases.

Malfeasance - Evil doing; ill conduct; the commission of some act which is positively prohibited by law.

Malicious prosecution - An action instituted with intention of injuring defendant and without probable cause, and which terminates in favor of the person prosecuted.

Mandamus - The name of a writ which issues from a court of superior jurisdiction, directed to an inferior court, commanding the performance of a particular act by a public official.

Mandate - A judicial command or precept proceeding from a court or judicial officer, directing the proper officer to enforce a judgment, sentence or decree.

Manslaughter - The unlawful killing of another without malice; may be either voluntary, upon a sudden impulse, or involuntary, in the commission of some unlawful act.

Material evidence - Such as is relevant and goes to the substantial issues in dispute.

Merits - Strict legal rights of parties; a substantial ground of defense in law.

Minor - Person not having reached the age of majority (18 years of age).

Misdemeanor - Offenses less than felonies; generally those punishable by fine or imprisonment otherwise than in penitentiaries.

Mistrial - An erroneous or invalid trial; a trial which cannot stand in law because of lack of jurisdiction, wrong drawing of jurors, or disregard of some other fundamental requisite.

Mitigating circumstances - One which does not constitute a justification or excuse of an offense, but which may be considered as reducing the degree of moral culpability.

Moot - Unsettled; undecided. A moot point is one not settled by judicial decisions.

Motion - Application by a party for a rule or order of the court; motions are either written or oral.

Municipal courts - In the judicial organization of some states, courts whose territorial authority is confined to the city or community.

Murder - The unlawful killing of a human being by another with malice aforethought, either express or implied.

Negligence - The omission to do something which a reasonable person would do; the doing of something which a reasonable and prudent person would not do.

No bill - This phrase, endorsed by a grand jury on an indictment, is equivalent to 'not found' or 'not a true bill'. It means that, in the opinion of the jury, evidence was insufficient to warrant the return of a formal charge.

Nolo contendere - (No contest); A plea, having the same effect as a plea of guilty in the case; inadmissible as an admission in a civil action.

Notice to produce - In practice, a notice in writing requiring the opposite party to produce a certain described paper or document at trial.

Objection - The act of taking exception to some statement or procedure in trial. Used to call the court's attention to improper evidence or procedure.

Offense - A violation of a criminal law.

Order - A direction of a judge made or entered in writing and not included in a judgment.

Out of court - One who has no legal status in court; not before the court.

Panel - A list of jurors to serve in a particular court, or for the trial of a particular action; denotes either the whole body of persons summoned as jurors for a particular term of court or those selected by the clerk by lot.

Parole - The release of a prisoner before his term has expired on condition of continued good behavior.

Parties - The plaintiff and the defendant in a civil action; the prosecution (the State) and the defendant in a criminal action.

Peremptory challenge - The challenge which the prosecution, or defense, may use to reject a certain number of prospective jurors without assigning any cause.

Personal property - (see property, personal).

Petitioner - In legal proceedings begun by petition, the person for whom action or relief is prayed.

Plaintiff - A person who brings a civil action and who is so named on the record.

Plea - The answer which the defendant makes to the prosecution's cause.

Pleading - The process by which the parties in a suit or action, alternately present written statements of their contentions, each responsive to that which precedes, and each serving to narrow the field of controversy, until there evolves a single point, affirmed on one side and denied on the other, called the 'issue' upon which they then go to trial.

Polling the jury - A practice whereby the jurors are asked individually whether they assented, and still assent, to the verdict.

Power of attorney - An instrument authorizing another to act as one's agent or attorney.

Prejudice - A bias; a preconceived opinion; an act or event which prejudices a party (usually the defendant) and substantially affects the legal rights and obligations of the party.

Prejudicial error - Synonymous with 'reversible error'; an error which warrants the appellate court in reversing the judgment before it.

Preliminary hearing - Synonymous with 'preliminary examination'; the hearing given a person charged with crime by a magistrate or judge to determine whether he or she should be held for trial.

Preponderance of evidence - Greater weight of evidence, or evidence which is more credible and convincing to the mind, not necessarily the greater number of witnesses.

Presentment - An informal statement in writing by a grand jury to the court that a public offense has been committed, from their own knowledge or observation, without any bill of indictment laid before them.

Presumption of fact - An inference as to the truth or falsity of any proposition or fact, drawn by a process of reasoning in the absence of actual certainty of its truth or falsity, or until such certainty can be ascertained.

Presumption of law - A rule of law that courts and judges shall draw a particular inference from a particular fact, or from particular evidence.

Probable cause - Reasonable grounds of suspicion, supported by sufficiently strong circumstances for believing that a crime was committed by the person accused.

Probate - The act or process of proving a will.

Probation - In modern criminal administration, allowing a person convicted of some minor offense (particularily juvenile offenders) to go at large, under a suspension of sentence, during good behavior, and generally under the supervision or guardianship of a probation officer.

Promissory note - A written promise to pay a certain sum of money, at a future time, unconditionally.

Property, community - Property acquired by husband and wife, or either, during marriage, when not acquired as the separate property of either; includes both personal and real property.

Property, personal - Everything which is the subject of ownership except for real property; generally, property of a personal or movable nature, as opposed to property of a local or immovable character, such as land or houses.

Property, real - Land, and generally whatever is erected or growing upon or affixed to land.

Property, separate - Separate property is property of a spouse acquired before marriage or during marriage as a result of a gift or bequest, or property designated separate by a court order or written agreement.

Prosecutor - One who instigates the prosecution upon which an accused is arrested or who prefers an accusation against the party whom he suspects to be guilty; also, one who takes charge of a case and performs the function of trial lawyer for the people.

Public defender - An attorney appointed to aid a person accused of crime or taken into custody as delinquent who cannot afford a lawyer, acting as counsel to the same degree as if he or she had been retained by the accused person in the case.

Quash - To overthrow; vacate; to annul or void a summons or indictment.

Quid pro quo - What for what, a fair return or consideration.

Real property - (see property, real).

Reasonable doubt - An accused person is entitled to acquittal if, in the minds of the jury, his guilt has not been proved beyond a 'reasonable doubt'; that state of the minds of jurors in which they cannot say they feel an abiding conviction as to the truth of the charge.

Rebuttal - The introduction of rebutting evidence; the showing that statements of witnesses as to what occurred is not true; the stage of a trial at which such evidence may be introduced.

Recidivism - The relapse into crime and return to prison of one who has been previously convicted and punished for a crime.

Redirect examination - Follows cross-examination, and is had by the party who first examined the witness.

Referee - A person to whom a cause pending in a court is referred by the court to take testimony, hear the parties, and report thereon to the court. He or she is an officer exercising judicial powers and is an arm of the court for a specific purpose.

Release - Discharge from confinement or custody.

Removal, order of - An order by a court directing the transfer of a cause to another court.

Replevin - An action taken to recover personal property unlawfully taken; the writ or procedure by which the property is recovered.

Reply - When a case is tried or argued in court, the argument of the plaintiff in answer to that of the defendant. A pleading in response to an answer.

Respondent - In legal proceedings begun by petition, the person against whom action or relief is prayed.

Rest - A party is said to 'rest' or 'rest his case' when he has presented all the evidence he intends to offer.

Retainer - Act of the client in employing his attorney or counsel, and also denotes the fee which the client pays when he retains the attorney to act for him.

Robbery - The felonious taking of money or goods of value from the person of another or in his presence, against his will, by force or by putting him in fear.

Sale - A transfer for value.

Search and seizure, unreasonable - In general, an examiniation without authority of law of one's premises or person with a view to discovering stolen, contraband or illicit property or some evidence of guilt to be used in prosecuting a crime.

Search warrant - An order in writing, issued by a judge or magistrate, in the name of the state, directing an officer to search a specified house or other premises for stolen property. Usually required as a condition precedent to a legal search and seizure.

Security - An obligation, pledge, mortage, deposit, lien, etc., given by a debtor in order to assure the payment or performance of the debt, by furnishing the creditor with a resource to be used in case of failure in the principal obligation.

Self-defense - The protection of one's person or property against some injury attempted by another. The law of 'self-defense' justified an act done in the reasonable belief of immediate danger. When acting in justifiable sel-defense, a person may not be punished criminally nor held responsible for civil damages.

Separate maintenance - Allowance granted to a wife for support of herself and children while she is living apart from her husband but not divorced from him.

Separate property - (see property, separate).

Separation of witnesses - An order of the court requiring all witnesses to remain outside the courtroom until each is called to testify, except the plaintiff or defendant.

Sheriff - An officer of a county, chosen by popular election, whose principal duties are aid of criminal and civil courts; chief preserver of the peace. He or she serves processes, summons juries, executes judgments and holds judicial sales.

Slander - Base and defamatory spoken words tending to prejudice another in his reputation, business or means of livelihood. 'Libel' and 'slander' both are methods of defamation, the former being expressed in print, writings, pictures or signs, the latter, orally.

Stare decisis - The doctrine that, when a court has once laid down a principal of law as applicable to a certain set of facts, it will adhere to that principle and apply it to future cases where the facts are substantially the same.

State's evidence - Testimony, given by an accomplice or participant in a crime, tending to convict others.

Statute - The written law in contradistinction to the unwritten law.

Stay - A stopping or arresting of a judicial proceeding by order of the court.

Stipulation - An agreement by attorneys on opposite sides of a case as to any matter pertaining to the proceedings or trial. It is not binding unless assented to by the parties, and most stipulations must be in writing.

Subpoena - A process directing a witness to appear and give testimony.

Subpoena duces tecum - A process by which the court commands a witness to produce certain documents or records in a trial.

Summons - A writ directing the sheriff or other officer to notify the named person that he or she is required to appear, on the day named, and answer the complaint in such action.

Surety - One who signs a bond and guarantees to pay money if the defendant fails to appear.

Suspended sentence - Postponed execution of sentence; sentence is imposed, and execution of sentence is suspended, postponed, or stayed for a period and on conditions set by the judge. If a violation of conditions of suspended sentence (probation) occurs, the judge may invoke, or cause to be executed, the sentence as imposed.

Tender - To offer money or the performance of an action.

Testimony - Evidence given by a competent witness under oath, as distinguished from evidence derived from writings and other sources.

Tort - A civil wrong other than breach of contract, for which the court will provide a remedy in the form of a lawsuit for damages.

Transcript - The official record of proceedings in a trial or hearing.

Trial - Examination of any issue of fact or law before a competent court to determine the rights of the parties.

Undue influence - Whatever destroys free will and causes a person to do something he would not do if left to him or herself.

Usury - The taking of more for the use of money than the law allows.

Venire - Technically, a writ summoning persons to court to act as jurors; popularly used to mean the body of names thus summoned.

Veniremen - Members of a panel of jurors.

Venue - The particular county, city or geographical area in which a court with jurisdiction may hear and determine a case.

Verdict - Decision or finding of a jury.

Voir dire - To speak the truth. The phrase denotes the preliminary examination which the court may make of one presented as a witness or juror, as to his or her qualifications.

Waive - To voluntarily give up a known right.

Warrant - A writ issued by a judge, addressed to a law enforcement officer, directing the doing of an act, such as an arrest or a search.

Weight of evidence - The balance or preponderance of evidence; the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other.

Willful - A 'willful' act is one done intentionally, without justifiable cause, as distinguished from an act done carelessly or inadvertently.

Witness - One who testifies to what he or she has seen, heard, or otherwise observed.

Writ - An order issuing from a court of justice and requiring the performance of a specified act, or giving authority and commision to have it done.